8-26-92
Vol. 57 No. 166

federal register

Wednesday
August 26, 1992

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(ISSN 0097-6326)

8-26-92
Vol. 57 No. 166
Pages 38577-38742

federal register

Wednesday
August 26, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–38 of August 11, 1992

Eligibility of Zambia To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to Zambia will strengthen the security of the United States and promote world peace.

You are directed to report this finding to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,

Washington, August 11, 1992.

[FR Doc. 92-20654

Filed 8-24-92; 3:08 pm]

Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220

National School Lunch Program, Special Milk Program for Children, and School Breakfast Program: Coordinated Review Effort

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule modifies a number of provisions contained in the final regulation implementing the unified accountability system required by the Child Nutrition and WIC Reauthorization Act of 1989. The final regulation was published on July 17, 1991 (56 FR 32920). These modifications are intended to facilitate the review activities of the State agencies.

EFFECTIVE DATE: September 25, 1992.

Comments: Comments must be submitted or postmarked on or before October 26, 1992.

ADDRESSES: Comments should be mailed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302. All written submissions will be available for public inspection in room 1007, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Eadie or Mr. Charles Heise at the above address or phone 703-305-2620.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect State agencies and school food authorities. However, this rule is expected to facilitate the review activities of the State agencies and to provide an appeal process for school food authorities wishing to dispute the denial of all or a part of a Claim for Reimbursement or withholding of payment resulting from review activities.

This rulemaking further implements the legislative mandates of Public Law 101-147, enacted November 10, 1989. The Department published a proposed rule (55 FR 52754) on December 21, 1990, and a final rule (56 FR 32920) on July 17, 1991. In response to the proposed rule, the Department received and analyzed over 4,000 comments. Because comments on the matters to be amended pursuant to this interim rule have previously been considered, and because the amendments will relieve burdens on States and local school food authorities, the Administrator of FNS has determined that prior notice and comment on the provisions of this rule would be unnecessary and contrary to public interest. Prior notice and comment rulemaking would only delay the attendant burden relief and hinder the training activities scheduled for the Fall of 1992. For these reasons, the Administrator has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that good cause exists to waive the solicitation of public comments prior to implementation. However, the Department believes this rule may be improved by public comment based on actual operating experience. Therefore, comments solicited on this rule must be postmarked or submitted on or before October 26, 1992. All comments will be analyzed, and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

The National School Lunch Program, the Special Milk Program for Children and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.556, and 10.553, respectively, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Information Collection

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, rule description and description of respondents for the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Title: Coordinated Review Effort.

Description: This interim rule provides school food authorities with the opportunity to appeal the denial of all or a part of a Claim for Reimbursement or withholding of payment resulting from reviews conducted under § 210.18. If the review is conducted by the State agency, the school food authority would appeal directly to the State agency. If the review is conducted by FNS, the school food authority would appeal directly to FNS.

Description of respondents: State agencies and school food authorities.

DESCRIPTION OF RESPONDENT'S ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDENS

7 CFR part	Annual Number of respondents	Annual frequency	Average burden per response	Annual burden hours
210.18(j),(q)	57 SAs	1	7	399

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "EFFECTIVE DATE" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of a Coordinated Review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q), (2) School food authority appeals of FNS findings as a result of a Coordinated Review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3), and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Background

Section 110 of Public Law 101–147, enacted November 10, 1989, amended the National School Lunch Act (42 U.S.C. 1751–1769c) by adding a new section 22 which states: "There shall be a unified system prescribed and administered by the Secretary for ensuring that local food service authorities that participate in the school lunch program under this Act comply with the provisions of this Act * * *. [E]ach State educational agency shall—(A) require that local food service authorities comply with the provisions of this Act; and (B) ensure such compliance through reasonable audits and supervisory assistance reviews * * *. In carrying out this section, the Secretary shall—(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and (2) through management evaluations, review the compliance of the State educational agency and the local school food service authorities with regulations issued under this Act * * *."

In response, the Department published a rule in the **Federal Register** (55 FR 52754) on December 21, 1990 which set forth a series of proposed revisions to Program monitoring regulations. The proposed monitoring system would have required State agencies to conduct supervisory assistance reviews of local school food authorities on a 3/5-year cycle. Following a 105-day public comment period, over 4,000 comments were received and analyzed. Based on that effort, the Department published a final rule in the **Federal Register** (56 FR 32920) on July 17, 1991 which set forth the Coordinated Review Effort, a monitoring system which requires State agencies to conduct supervisory assistance reviews on a 4-year cycle.

Subsequent to publication of the final rule, the Department solicited input individually from representatives of State and local agencies in the development of needed review instruments and guidance. These consultations enabled the Department to benefit from State and local experiences in the development of materials. From this effort, the Department developed a review instrument. In order to ensure that the review instrument is an effective monitoring tool, the Department field tested the instrument in November, made refinements, and field tested the refined version in March.

During this developmental process, concerns were expressed that several modifications would improve the final rule while maintaining the integrity of the Program. These modifications would reduce the burden on the State agency and establish procedures for school food authorities to appeal the denial of all or part of a Claim for Reimbursement or withholding of Program payment resulting from a review conducted under § 210.18. This interim rule makes those modifications to provide immediate relief. However, the Department believes this rule may be further improved by public comment; thus, comments are solicited on this interim rule.

These modifications are discussed by section citation. Commenters are urged to identify the section citation in their comments.

Section 210.18 Administrative Reviews

Implementation Dates

Under § 210.18(a) of the final rule, *Implementation dates*, State agencies were required to conduct reviews as prescribed under § 210.18 for the school year beginning July 1, 1992. At State agency discretion, State agencies were allowed to begin implementation as early as August 16, 1991, in lieu of conducting reviews under the Assessment, Improvement and Monitoring System.

Since publication of the final Coordinated Review Effort regulation on July 17, 1991, the American School Food Service Association (ASFSA), on behalf of a number of State agencies and school food authorities, has expressed concerns regarding the July 1, 1992 implementation date. ASFSA was concerned that additional time is needed to provide State agency staff additional training and to provide the opportunity to explain the new review structure to local school food authorities.

The Department firmly believes that training is the key to the successful implementation of the Coordinated Review Effort. The Department has conducted intensive training for all State agency personnel in a number of locations nationwide. The Department's training efforts focused on developing a shared understanding of the Coordinated Review Effort monitoring system, the review instrument and the guidance.

Given the Department's commitment to the successful implementation of the Coordinated Review Effort, this interim rule revises paragraph (a) to authorize FNS to approve a State agency's written request showing good cause to delay implementation of the Coordinated Review Effort from July 1, 1992 to January 1, 1993. Approval of a request to delay will be based on a demonstrated need for increased training activities, staffing difficulties, etc. A corresponding change has been made to the first sentence of paragraph (c).

In recognition of the fact that some State agencies began implementation of the Coordinated Review Effort prior to the July 1, 1992 mandatory implementation date, the Department

will allow State agencies to count any review conducted in accordance with the Coordinated Review requirements specified in § 210.18 prior to July 1, 1992, towards meeting the review requirements of the first review cycle.

For those State agencies that receive FNS approval to delay the Coordinated Review Effort from July 1, 1992 to January 1, 1993, the first review cycle will end December 31, 1996. For all other State agencies, the review cycle began on July 1, 1992 and will end on June 30, 1996. State agencies are required to conduct reviews of all school food authorities at least once during each four year cycle. Regulations do not establish a per year minimum number of reviews to be conducted since staffing patterns, travel dollars, logistics, etc. must be considered. Therefore, each State agency may establish its own schedule of reviews and group those reviews to accommodate the special needs of the State agency. The Department would, however, like to remind State agencies that 7 CFR Part 235, State Administrative Expense Funds, does provide funding for monitoring activity. FNS will evaluate the level of monitoring activity on management evaluations.

Residential Child Care Institutions

In paragraph (e) of the final rule, *Number of schools to review*, State agencies were required to review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more, but not less than the minimum number of schools illustrated in Table A. This provision was intended to ensure that schools with the likelihood of a problem were reviewed; however, this provision had an unintended deleterious effect when applied to residential child care institutions which generally serve all children free and, therefore, would almost always meet the 100/100 school selection criteria.

For this reason, paragraph (e)(1) of this interim rule excludes residential child care institutions from the 100/100 school selection criteria. Paragraph (e)(1) states "Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review less than the minimum number of schools in table A: * * *" Table A remains unchanged.

Application Review Procedures

Paragraph (g)(1) of the final rule, *Performance Standard 1*, required State agencies to determine that the free and reduced price eligibility determinations, effective for the review period, were correct. Paragraph (f)(2) of the final rule specified that the review period "shall cover, at a minimum, the most recent month for which a Claim for Reimbursement was submitted. * * *" The field tests conducted by the Department identified two complications with these provisions.

A review of applications effective for the review period results in a review of applications effective for a prior period of time, rather than of those applications effective for the day of the review. In a school food authority with a high degree of student mobility, it may be time consuming to reconstruct the pool of eligible students for a period of time likely to be one to two months before the State agency's visit.

To provide State agencies with additional flexibility in the review of applications in the reviewed schools, paragraph (g)(1)(i)(A)(*1*) of the interim rule allows the State agency to review (a) all approved free and reduced price applications effective for the review period, as required in the final rule, or (b) all approved free and reduced price applications back to the beginning of the school year, or (c) all approved free and reduced price applications effective on the day(s) the review is conducted. This interim rule also makes corresponding changes to accommodate this additional review flexibility. In the second sentence of paragraph (g)(1), reference to the review period is removed, and in paragraph (g)(1)(i)(B), the word "currently" is removed.

The second complication in paragraph (g)(1) of the final rule related to the number of free and reduced price applications to be reviewed. Under paragraph (g)(1)(i)(A)(*1*) of the final rule, the State agency was required to review either all of the free and reduced price applications effective for the review period, or a statistically valid sample.

Even though Program regulations allowed for a statistically valid sample to be reviewed, the sampling process was often perceived as too complex to offer relief to a State agency. During the test reviews, it became apparent that, in some cases, a State agency could determine if a school food authority was correctly approving applications without reviewing a statistically valid sample of applications.

To address this concern, the Department intends to propose a change to the regulations which would enable FNS, on a case-by-case basis, to authorize a State agency to limit its review of all applications, as required under paragraph (g)(1)(i)(A)(*1*), if a review of a substantial number of free and reduced price applications reveals that the school food authority consistently exercises its application approval activity in accordance with 7 CFR part 245.

In summary, paragraph (g)(1)(i)(A)(*1*) of the interim rule requires a review of all of the free and reduced price applications, effective for specified periods of time, in the reviewed schools. In lieu of reviewing all applications, paragraph (g)(1)(i)(A)(*2*) of the interim rule continues to allow State agencies to review a statistically valid sample of applications. To accommodate these changes, paragraphs (g)(1)(i)(A)(*2*) and (g)(1)(i)(A)(*3*) of the final rule are redesignated in the interim rule as paragraphs (g)(1)(i)(A)(*3*) and (g)(1)(i)(A)(*4*), respectively.

Notice of Fiscal Action or Withholding Payment

This interim rule offers school food authorities the opportunity to appeal the denial of all or a part of a Claim for Reimbursement or withholding of payments which result from a review required under § 210.18. While the actual appeal procedures are discussed later in this preamble under *Appeal Process*, paragraph (j), Exit conference and notification, has been expanded to address notification of fiscal action or withholding payment requirements.

Under paragraph (j) of this interim rule, State agencies are required to advise school food authorities in writing of the grounds for denial of all or a part of a Claim for Reimbursement or withholding of payment resulting from a review conducted under § 210.18. The "* * * notice, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed."

The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.30(d)(3) of the regulations.

Withholding Payment

Paragraph (l)(1) of the final rule, Withholding payment, required State agencies to withhold payment: (i) If the State agency found that corrective action was not completed and/or documented corrective action was not provided within the specified deadlines; or (ii) If, on a follow-up review, the State

agency found that corrective actions were not taken as specified in the documented corrective action in either the critical or general areas.

FNS has determined that the withholding of payment provision, as it appeared in the final rule, may be too exacting and broad in scope. Severe repercussions could result from non-compliance in areas that were not deemed "critical" to the operation of the Program. To remedy this situation, this interim rule limits mandatory withholding of payments to those school food authorities with critical area violations which exceed the review threshold(s) and/or where serious problems continue to exist in either of two aspects of the general areas of review, verification and recordkeeping.

Specifically, paragraphs (l)(1)(i)–(iii) of the interim rule require State agencies to withhold all Program payments to a school food authority: "(i) * * * if documented corrective action for critical area violation(s) which exceed the review threshold(s) is not provided within the deadlines specified in paragraph (k)(2) of this section; and/or (ii) * * * if, in the event that a follow-up review is not conducted, the State agency finds that corrective action for a critical area violation which exceeded the review threshold was not completed within the deadlines specified in paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section; and/or (iii) * * * if, on a follow-up review, the State agency finds a critical area violation which exceeded the review threshold on a previous review and continues to exceed the review threshold on a follow-up review."

In addition, paragraphs (l)(1) (iv) and (v) of the interim rule state: "(iv) The State agency shall withhold a minimum of 10 percent of the Program payments to a school food authority if the State agency finds, on a follow-up review, that serious problems continue to exist in the school food authority's verification or recordkeeping activities. (v) The State agency may withhold payments at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (k)(2) of this section, that corrective action is not complete, or that corrective action was not taken as specified in the documented corrective action for a general area violation or for a critical area violation which did not exceed the review threshold."

Paragraph (1)(3) of the final rule stated that "Under extraordinary circumstances, FNS may authorize a State agency to limit withholding of funds to an amount less than the total Program payments." This provision was designed to allow FNS the opportunity to reduce the amount of withholding where the continued health of the Program would be threatened by the withholding of all Program funds.

This provision did not take into account the State agency's first-hand knowledge of mitigating circumstances, including the financial stability of the local school food service and the willingness of the school food authority to effect corrective action. The State agency's insight into local Program operations is a significant aspect of a successful monitoring system.

In recognition of this, the interim rule authorizes State agencies to reduce the amount required to be withheld from a school food authority by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. To withhold less than 40 percent would continue to require the approval of FNS.

Fiscal Action

Paragraph (m) of the final rule, Fiscal action, required fiscal action for all violations of Performance Standards 1 and 2. This provision, in conjunction with § 210.19(c), which required fiscal action to be extended back to the date of application approval, caused concern amongst the school food service community.

FNS has determined to allow State agencies to limit fiscal action for errors found on a first review related to certification, issuance of benefits and updating eligibility status. To this end, the interim rule continues to require fiscal action for all violations of Performance Standards 1 and 2; however, for first review errors related to certification, issuance of benefits and updating eligibility status, the State agency may limit fiscal action to the period from the point corrective action occurs back through the beginning of the review period, rather than back to the date of application approval, provided corrective action occurs. FNS anticipates that States will exercise this authority in non-egregious situations and FNS will assess the use of this flexibility during the on-going management evaluation process.

A new sentence has been added to paragraph (m) to effect this change—"Except that, on an administrative review, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this section, provided corrective action occurs." If corrective action does not occur, fiscal action is extended back to the beginning of the school year or to that point in time during the current school year when the infraction first occurred, as applicable. This interim rule also makes a corresponding change to § 210.19(c)(2) to acknowledge the exception language.

The Department would like to take this opportunity to clarify its position regarding fiscal action. When pursuing fiscal action, the Department is seeking to recover Federal funds that the school food authority did not earn. Program regulations direct the State agency to identify the school food authority's correct entitlement through accurate local school food authority data, to the extent it is available. Use of projections based on State or national percentages should be the last resort when calculating fiscal action.

Appeal Process

This interim rule offers school food authorities the opportunity to appeal the denial of all or a part of a Claim for Reimbursement or withholding of payments which result from a review required under § 210.18.

Commenters should note that appeals are limited to two areas, the denial of all or part of a Claim for Reimbursement and withholding of payments resulting from a review required under § 210.18; administrative appeals are not available for any other Program action, such as required corrective action.

If the review is a State agency-conducted review, the school food authority will appeal to the State agency. If the review is a Federally-conducted review, the school food authority will appeal to FNS. To ensure that the school food authority is properly apprised of the appeal procedures, § 210.18(j) has been revised as discussed earlier in this preamble.

School Food Authority Appeal of State Agency Findings

The final Coordinated Review Effort rule did not offer school food authorities a structured procedure to appeal the denial of all or a part of a Claim for Reimbursement or withholding of Program payments resulting from a Coordinated Review. An appeal process was deemed unnecessary since school food authorities have always been allowed to provide documentation challenging any review finding. Regardless, concerns continued to surface about the need for an appeal process.

In order to alleviate any concerns that may be caused by the denial of all or part of the Claim for Reimbursement or by withholding of payments as a result

of administrative or follow-up review activity under § 210.18, FNS sets forth school food authority appeal procedures in this interim rule. The procedures for a school food authority's appeal to the State agency are very similar to the institution appeal procedures set forth in § 226.6(k) of the Child and Adult Care Food Program regulations (CFR part 226). To accommodate this addition, paragraph (q) of the final rule, *FNS review activity*, is redesignated as paragraph (r) and a new paragraph (q), *School food authority appeal of State agency findings*, is added.

New paragraph (q) of the interim rule requires State agencies to establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding of payments arising from administrative or follow-up review activity conducted by the State agency under § 210.18.

Under paragraph (q), State agencies are authorized to use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for a review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own procedures or if State agency-established procedures do not meet these criteria, then the State agency is required to follow the minimum procedures set forth in paragraph (q). These procedures are:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of a Claim for Reimbursement or withholding payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

School Food Authority Appeal of FNS Findings

Section 210.30 of this interim rule also affords school food authorities the opportunity to appeal the denial of all or part of the Claim for Reimbursement or withholding of payment arising from administrative or follow-up review activity conducted by FNS in accordance with the provisions of § 210.18. To accommodate this change, paragraph (d)(3) of the final rule is redesignated as (d)(4) and a new paragraph (d)(3), School food authority appeal of FNS findings, which sets forth the procedures a school food authority must follow in order to appeal those findings to FNS, is added by this interim rule. These procedures parallel those in § 210.18(q) which a State agency must follow if it does not have its own procedures or if State agency-established procedures fail to meet the minimum standards in § 210.18 (q).

A school food authority wishing to request a review of FNS findings shall file a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia, 22302, in accordance with the appeal procedures. In summary, the appeal procedures are:

(1) The written request for a review of the record shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of a Claim for Reimbursement or withholding payment and the envelope containing the request shall be prominently marked "Request for Review". FNS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FNS Administrative Review Officer (ARO) reviewing the case. FNS will also notify the State agency of the request for appeal.

(2) The appellant may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. A representative of FNS shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO;

(3) If the appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice, sent by certified mail,

return receipt requested, of the time, date, and place of the hearing;

(4) Any information on which FNS's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The ARO shall make a determination based on information provided by FNS and the appellant, and on Program regulations;

(7) Within 60 calendar days of the receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the ARO shall inform FNS, the State agency and the appellant of the determination of the ARO. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The action being appealed shall remain in effect during the appeal process;

(9) The determination by the ARO is the final administrative determination to be afforded to the appellant.

This interim rule also amends 7 CFR 215.11(b) and 7 CFR § 220.13(f) to extend the State agency and the FNS appeal procedures to the School Breakfast Program and the Special Milk Program for Children insofar as those programs are reviewed under § 210.18 and, as a result of those reviews, the State agency denies all or a part of a Claim for Reimbursement or withholds payment.

§ 210.19 Additional Responsibilities

Overpayment Disregard

Paragraph (d) of the final rule, Management evaluations, authorized State agencies to disregard any overpayment if the total overpayment does not exceed $250 for any fiscal year. This provision was adopted to relieve State agencies (and FNS) of the burden associated with collecting very small overpayments.

Arguments have been made that the $250 figure did not adequately represent the cost of collecting an overpayment.

Thus, the interim rule allows State agencies, FNS and the Department's Office of Inspector General (OIG) to disregard any overpayment if the total overpayment does not exceed $600 in any fiscal year. This interim rule also amends 7 CFR 215.13(e) and 7 CFR 220.15(f) to extend this provision to overpayments in the School Breakfast Program and the Special Milk Program for Children. A corresponding technical amendment revises 7 CFR 215.2 and 7 CFR 220.2 to include the definition of "OIG".

Section 210.30 Management Evaluations

The appeal procedures set forth in § 210.30(d)(3) are described above under § 210.18 of this preamble in conjunction with the school food authority appeals to the State agency.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grants program-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs-social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210, 215, and 220 are amended, as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: The provisions of part 210 issued under sec. 2-12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751-1760, 1779.

2. In § 210.18,

a. Paragraph (a) is amended by adding a new sentence between the first and second sentences.

b. Paragraph (c) introductory text is amended by adding the words ", unless otherwise approved by FNS in accordance with paragraph (a) of this section" to the end of the first sentence.

c. Paragraph (e)(1) is amended by removing the words "The State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more, but not" and by adding in their place the words "Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review" in their place.

d. Paragraph (g)(1) is amended by removing the phrase ", effective for the review period," for the first sentence after the title.

e. Paragraph (g)(1)(i)(A) introductory text is revised.

f. Paragraphs (g)(1)(i)(A)(*2*) and (g)(1)(i)(A)(*3*) are redesignated as (g)(1)(i)(A)(*3*) and (g)(1)(i)(A)(*4*), respectively; paragraph (g)(1)(i)(A)(*1*) is revised; and new paragraph (g)(1)(i)(A)(*2*) is added.

g. Paragraph (g)(1)(i)(B) is amended by removing the word "currently" from the first sentence.

h. Paragraph (j) is amended by adding three sentences to the end of the paragraph.

i. Introductory paragraph (l) is amended by removing the word "all", and paragraphs (l)(1) and (1)(3) are revised.

j. Paragraph (m) is amended by adding a new sentence between the first and second sentence.

k. Paragraph (q) is redesignated as paragraph (r) and new paragraph (q) is added.

§ 210.18 Administrative reviews.

(a) * * * However, FNS will approve a State agency's written request if FNS determines that the State agency has demonstrated good cause to delay implementation of the provisions specified under this section to January 1, 1993. * * *

* * * * *

(g) * * *

(1) * * *

(i) * * *

(A) Determine the number of children eligible for free, reduced price and paid lunches, by type, for the review period. To make this determination:

(*1*) The State agency shall:

(*i*) Review all approved free and reduced price applications for children in the reviewed schools back to the beginning of the school year to determine whether each child's application is complete and correctly approved in accordance with all applicable provisions of 7 CFR Part 245; or

(*ii*) Review all approved free and reduced price applications effective for the review period for children in the reviewed schools; or

(*iii*) Review all approved free and reduced price applications effective on the day(s) the review is conducted for children in the reviewed schools.

(*2*) In lieu of reviewing all of the free and reduced price applications as required under paragraph (g)(1)(i)(A)(*1*) of this section, the State agency may review a statistically valid sample of

those applications. If the State agency chooses to review a statistically valid sample of applications, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for follow-up reviews and base fiscal action upon the error rate found in the sample.

* * * * *

(j) * * * As a part of the denial of all or a part of a Claim for Reimbursement or withholding payment in accordance with the provisions of this section, the State agency shall provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed. The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.3(d)(3) of the regulations.

* * * * *

(l) * * *

(1) *Cause.* (i) The State agency shall withhold all Program payments to a school food authority if documented corrective action for critical area violation(s) which exceed the review threshold(s) is not provided within the deadlines specified in paragraph (k)(2) of this section; and/or

(ii) The State agency shall withhold all Program payments to a school food authority if, in the event that a follow-up review is not conducted, the State agency finds that corrective action for a critical area violation which exceeded the review threshold was not completed within the deadlines specified in paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section; and/or

(iii) The State agency shall withhold all Program payments to a school food authority if, on a follow-up review, the State agency finds a critical area violation which exceeded the review threshold on a previous review and continues to exceed the review threshold on a follow-up review; and/or

(iv) The State agency shall withhold a minimum of 10 percent of the Program payments to a school food authority if the State agency finds, on a follow-up review, that serious problems continue to exist in the school food authority's verification or recordkeeping activities.

(v) The State agency may withhold payments at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (k)(2) of this section, that corrective action is not complete or that corrective action was not taken as specified in the documented corrective action for a general area violation or for a critical area violation which did not exceed the review threshold.

* * * * *

(3) *Exceptions.* The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (l)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FNS determines such action to be in the best interest of the Program.

* * * * *

(m) * * * Except that, on an administrative review, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this section, provided corrective action occurs. * * *

* * * * *

(q) *School food authority appeal of State agency findings.* Except for FNS-conducted reviews authorized under § 210.30(d)(2) of this part, each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the State agency under § 210.18 of this part. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are

subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

* * * * *

3. In § 210.19,

a. Paragraph (c)(2)(ii) is amended by revising the first sentence.

b. Paragraph (d) is amended by revising the fourth sentence.

§ 210.19 Additional responsibilities.

* * * * *

(c) * * *

(2) * * *

(ii) Unless otherwise specified under § 210.18(m) of this part, fiscal action shall be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred, whichever is earlier. * * *

* * * * *

(d) * * * In conducting management evaluations, reviews and audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. * * *

* * * * *

4. In § 210.30, paragraph (d)(3) is redesignated as paragraph (d)(4) and new paragraph (d)(3) is added.

§ 210.30 Management evaluations.

* * * * *

(d) * * *

(3) *School food authority appeal of FNS findings.* When administrative or follow-up review activity conducted by FNS in accordance with the provisions of paragraph (d)(2) of this section results in the denial of all or part of a Claim for Reimbursement or withholding of payment, a school food authority may appeal the FNS findings by filing a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia, 22302, in accordance with the appeal procedures specified in this paragraph:

(i) The written request for a review of the record shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding payment and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW". FNS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FNS Administrative Review Officer (ARO) reviewing the case. FNS will also notify the State agency of the request for appeal.

(ii) The appellant may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. A representative of FNS shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO;

(iii) If the appellant has requested a hearing, the appellant shall be provided with a least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing;

(iv) Any information on which FNS's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(v) The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(vi) The ARO shall make a determination based on information provided by FNS and the appellant, and on Program regulations;

(vii) Within 60 calendar days of the receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the ARO shall inform FNS, the State agency and the appellant of the determination of the ARO. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(viii) The action being appealed shall remain in effect during the appeal process;

(ix) The determination by the ARO is the final administrative determination to be afforded to the appellant.

* * * * *

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation continues to read as follows:

Authority: Secs. 3, 10, Child Nutrition Act of 1966, 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779).

2. In § 215.2, new paragraph (s–1) is added.

§ 215.2 Definitions.

* * * * *

(s–1) *OIG* means the Office of the Inspector General of the Department.

* * * * *

3. In § 215.11, two new sentences are added at the end of paragraph (b)(2) to read as follows:

§ 215.11 Special responsibilities of State agencies.

* * * * *

(b) * * *

(2) * * * School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this title or by FNS under § 210.30(d)(2) of this title. Any such appeal shall be subject to the procedures set forth under § 210.18(q) of this title or § 210.30(d)(3) of this title, as appropriate.

* * * * *

4. In § 215.13, paragraph (e) is revised as follows:

§ 215.13 Management evaluations and audits.

* * * * *

(e) In conducting management evaluations, reviews and audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if

the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: Secs. 4 and 10 of the Child Nutrition Act of 1966, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.2, new paragraph (q–2) is added to read as follows:

§ 220.2 Defintions.

* * * * *

(q–2) OIG means the Office of the Inspector General of the Department.

* * * * *

3. In § 220.13, two new sentences are added at the end of paragraph (f)(2) to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(2) * * * School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this title or by FNS under § 210.30(d)(2) of this title. Any such appeal shall be subject to the procedures set forth under § 210.18(q) of this title or § 210.30(d)(3) of this title, as appropriate.

* * * * *

4. In § 220.15, paragraph (f) is revised to read as follows:

§ 220.15 Management evaluations and audits.

* * * * *

(f) In conducting management evaluations, reviews and audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

Dated: August 20, 1992.

George A. Braley,

Acting Administrator.

[FR Doc. 92–20400 Filed 8–25–92; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV–92–049FR]

Oregon-California Irish Potatoes; Relaxation of Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting, without modification, as a final rule the provisions of an interim final rule which relaxed the pack regulations for Oregon-California Irish potatoes to allow handlers to ship U.S. No. 2 grade Irish potatoes, weighing at least 10 ounces, in 50-pound cartons. This action will enable handlers to ship a substantial amount of this season's U.S. No. 2 grade potatoes in cartons, thus meeting customer demands and maximizing grower returns. This action was recommended by the Oregon-California Potato Committee (committee), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2170.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 947 [7, CFR part 947], as amended, regulating the handling of Irish potatoes grown in Oregon (except Malheur County) and certain counties in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes subject to regulation under the marketing order and approximately 470 producers in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Oregon-California potato producers and handlers may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in 7 CFR 947.340. Potatoes shipped to points within the continental United States are required to be at least 2 inches in diameter or 4 ounces in weight, and potatoes shipped to export

destinations must be at least 1½ inches in diameter. Also, red-skinned varieties of potatoes may be shipped without regard to a minimum size requirement, if they otherwise grade at least U.S. No. 1. Non-red-skinned varieties of potatoes that are 1¾ inches in diameter or less may be shipped if they grade at least U.S. No. 1. Prior to the interim final rule, potatoes shipped in 50-pound cartons had to meet a minimum grade of U.S. No. 1 except that potatoes that failed to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration could be shipped provided that no more than ten percent hollow heart and/or internal discoloration was present or not more than five percent serious damage by internal defects.

Customers had been requesting U.S. No. 2 grade potatoes in 50-pound cartons because 50-pound burlap sacks and paper bags were messy, unsanitary and did not stack well on pallets. Some retail and restaurant trade buyers complained that burlap sacks were dirty and could shed fibers. Further, paper bags could tear before arriving at their destination.

Many customers had been purchasing potatoes from other areas where U.S. No. 2 grade potatoes are packed in 50-pound cartons. The committee responded to these changing market conditions so handlers would not lose sales.

This action continues to authorize Oregon-California potato handlers to ship U.S. No. 2 grade potatoes, weighing at least 10 ounces, in 50-pound cartons. This action will increase overall potato shipments from the production area, increase financial returns to the industry and satisfy customer needs.

An interim final rule relaxing the pack regulations was published in the **Federal Register** on June 10, 1992 [57 FR 24541]. A 30-day comment period was established to provide an opportunity for written comments. The comment period ended on July 10, 1992. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the continued relaxation of the pack regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues in effect the relaxed pack requirements; (2) potato shippers will need no additional time to continue complying with the relaxed requirements; (3) the interim final rule provided a 30-day comment period and no comments were received; and (4) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending the provisions of section 947.340, published in the **Federal Register** [56 FR 24541, June 10, 1992], is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-20384 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19 and 20

RIN 3150-AE21

Standards for Protection Against Radiation; Extension of Implementation Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is extending the implementation date for its revised standards for protection against radiation and making a conforming change to its regulation. See **SUPPLEMENTARY INFORMATION** for specific regulatory parts affected. This rule extends the date by which NRC licensees are required to implement the revised standards for protection against radiation to January 1, 1994. The 1-year extension provides licensees additional time to examine and implement the regulatory guidance developed to support the rule. It also establishes a concurrent implementation date for NRC licensees and Agreement State licensees.

EFFECTIVE DATE: September 25, 1992.

FOR FURTHER INFORMATION CONTACT:
Dr. Donald A. Cool, Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492-3785.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1990, the Commission approved the final revision of 10 CFR part 20, "Standards for Protection Against Radiation," which incorporated the recommendations of the International Commission on Radiological Protection (ICRP) issued in 1977 and implemented the recommendations contained in the Guidance to Federal Agencies for Occupational Exposure signed by the President in 1987. With the approval of the final rule, the Commission specified its desire to have the rule become effective 30 days following publication in the **Federal Register** with a provision that licensees would be permitted until January 1, 1993, to implement the revision. The Commission also stated that Agreement States should require that all Agreement State licensees comply with compatible State regulations on or before January 1, 1994, with early implementation encouraged.

When the Commission approved the revision to 10 CFR part 20, the Commission and the NRC staff expected that the revised standards for protection against radiation would be published in the **Federal Register** in early January 1991, giving licensees 2 full years to meet the required implementation date. The Commission also expected that the related draft regulatory guides would be published for public comment early in 1991 and published in final form by December 31, 1991. Unfortunately, difficulties arose with the publication of the final rule because of the need to satisfy the legal and procedural requirements necessary to accommodate concurrent enforcement of both the existing requirements contained in 10 CFR part 20, as well as the new standards for protection against radiation contained in §§ 20.1001–20.2401. Because of these problems and the need to revise the numbering system and implementation sections accordingly, the final rule was not published until May 21, 1991 (56 FR 23360). There was also a corresponding delay in the development and publication of the regulatory guides.

On October 16, 1991, the Nuclear Management and Resources Council (NUMARC) requested that the Commission extend the date for implementation of the revised 10 CFR part 20 from January 1, 1993, to January 1, 1994. NUMARC's basis for this request was that the regulatory guides

associated with the rulemaking had not been completed as indicated at the time the final rule was published. On October 24, 1991, and November 22, 1991, similar requests were filed by the Yankee Atomic Electric Company (YAEC) and the National Organization of Test, Research and Training Reactors (TRTR). In a letter dated December 12, 1991, NUMARC provided additional information regarding its position on the availability and importance of certain regulatory guidance documents to the implementation process of the final rule.

The Commission's discussion of the need for regulatory guidance, published as part of the Statement of Considerations, section IV, "Need for Additional Regulatory Guides" in the final rule, recognized that the incorporation of many new concepts into part 20 would require additional guidance and explanation of their application to practical problems in radiation protection. The discussion also included a listing of some of the guides that were being developed or revised, although no measure of importance or priority was provided with the listing. The December 12, 1991, letter stated NUMARC's position on the availability and importance of certain regulatory guides to the implementation process for the revision of 10 CFR part 20.

In response to the additional information provided by NUMARC and in consideration of the topics to be addressed, the NRC evaluated the regulatory guides which were under development and determined which guides would be especially useful for implementation of the revision. Regulatory guides covering new requirements or new concepts in the revised standards for protection against radiation have been issued in final form.

Comments on the Proposed Rule

The Commission received thirty-four (34) letters commenting on the proposed rule.

The majority of commenters stated agreement with the proposed rule, indicating that the additional time was needed to effectively implement the revisions to 10 CFR part 20. Many commenters were in favor of concurrent adoption of the rule by NRC licensees and Agreement States. However, several utilities, while indicating agreement with industry on delaying the rule stated that a delay would result in additional costs by extending the implementation effort for an additional year and emphasized that regulatory guidance should be available to support early implementation on January 1, 1993.

One comment was received opposing any delay, citing the need to move forward and adopt the newer international standards for worker protection rather than delay any longer the adoption of these revisions to 10 CFR part 20. While the Commission believes that adoption of these revisions is necessary, an additional year's delay should not result in any decrease in workers protection. The current practice of keeping radiation exposures as low as is reasonably achievable (ALARA), has resulted in the average radiation dose to occupationally exposed individuals to be well below the limits of the amended part 20 and also below the 2 rem average recently recommended as a limitation by the International Commission on Radiological Protection.

It is the Commission's goal to have a firm and consistent basis for enforcement at the time the final rule is fully implemented. In support of this goal, the Commission has considered and is granting a delay in the published January 1, 1993, implementation date, as requested by NUMARC, TRTR, and YAEC based on the following considerations. First, a delay in the implementation date will provide licensees with the opportunity to further study the rule and regulatory guides and, therefore, should result in a more orderly and efficient implementation. A delay will also provide additional time to obtain adequate resources for implementation actions and contracted assistance. Second, extending the implementation date for NRC licensees 1 year to January 1, 1994, will provide a uniform, concurrent implementation date for NRC licensees and Agreement States, thereby eliminating the period during which Agreement States could still be enforcing the existing part 20 while NRC would be requiring adherence to the revised part 20.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2): An administrative action that will not result in any hardship. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements, including requirements contained in §§ 20.1001–20.2401, published on May 21, 1991, were approved by the Office of Management and Budget, approval numbers 3150–0014, and 3150–0044.

Regulatory Analysis

The amendment is administrative and will not have a significant impact; therefore, the Commission has not prepared a regulatory analysis on this regulation. The final regulatory analysis for the final rule that was published on May 1, 1991, examined the costs and benefits of the alternatives considered by the Commission and is available for inspection in the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this is an administrative action that will not have a significant impact upon a substantive number of small entities. This action will apply to all NRC licensees. The final rule affects approximately 7,500 licensees, approximately one-quarter of which are classified as small entities under 10 CFR part 20.

The types of small entities that would be affected by this final rule include physicians, small hospitals, small laboratories, industrial applications in small industries, radiographers, and well loggers.

This administrative action will result in no increase in the burden on NRC licensees. Rather, it will provide licensees an additional year to implement the revisions to 10 CFR part 20. It will also reduce the Commission's administrative burden by providing a concurrrent implementation date for all licensees and by facilitating publication of regulatory guidance.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to the final rule and, therefore, that a backfit analysis is not required for this rule. This amendment is administrative in nature and does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, and Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 19 and 20.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. In § 19.13, paragraph (b) is revised to read follows:

§ 19.13 Notifications and reports to individuals.

* * * * *

(b) Each licensee shall advise each worker annually of the worker's dose as shown in records maintained by the licensee pursuant to part 20 (§ 20.401 and § 20.601 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.2106). Prior to January 1, 1994, licensees operating under §§ 20.1–20.601 are required to provide this information only upon request of the worker.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for part 20 continues to read as follows:

Authority: secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103 (a), (b), and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, 20.305, 20.1102, 20.1201–20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1501, 20.1502, 20.1601 (a) and (d), 20.1602, 20.1603, 20.1701, 20.1704, 20.1801, 20.1802, 20.1901(a), 20.1902, 20.1904, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005 (b) and (c), 20.2006, 20.2101–20.2110, 20.2201–20.2206, and 20.2301 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 20.2106(d) is issued under the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a; and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), 20.409, 20.1102(a) (2) and (4), 20.1204(c), 20.1206 (g) and (h), 20.1904(c)(4), 20.1905 (c) and (d), 20.2005(c), 20.2006(b)–(d), 20.2105–20.2108, and 20.2201–20.2207 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 20.1008, paragraph (a) is revised to read as follows:

§ 20.1008 Implementation.

(a) Licensees shall implement the provisions of §§ 20.1001–20.2401 on or before January 1, 1994. If a licensee chooses to implement the provisions of §§ 20.1001–20.2401 prior to January 1, 1994, the licensee shall implement all provision of these sections not otherwise exempted by paragraph (d) of this section, and shall provide written notification to either the Director of the Office of Nuclear Materials Safety and Safeguards or the Director of the Office of Nuclear Reactor Regulation, as appropriate, that the licensee is adopting early implementation of §§ 20.1001–20.2401 and associated appendices. Until January 1, 1994, or until the licensee notifies the Commission of early implementation, compliance will be required with §§ 20.1–20.601 of this part.

* * * * *

Dated at Rockville, Maryland, this 20th day of August 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–20405 Filed 8–25–92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM91-11-003]

In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Order Granting, in Part, and Denying, in Part, Clarification, Rehearing, and Reconsideration

Issued August 20, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing, reconsideration, and clarification.

SUMMARY: On June 24, 1992, the Commission issued an order (59 FERC ¶ 61,351, 57 FR 29,302 (July 1, 1992)) granting, in part, Natural Gas Clearinghouse's motion for the establishment of generic discovery procedures applicable to all pipelines' individual Order No. 636 restructuring proceedings. Timely requests for rehearing of the June 24 order were filed by Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, Indiana Gas Company, United Distribution Companies, and Tennessee Gas Pipeline Company. Northern Natural Gas Company, Transwestern Pipeline Company, and Florida Gas Transmission Company jointly filed a timely request for clarification or, alternatively, rehearing. The Coastal Companies filed a request for reconsideration. This order grants, in part, and denies, in part, clarification, rehearing, and reconsideration.

FOR FURTHER INFORMATION CONTACT: Mary Benge, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1214.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

On June 24, 1992, the Commission issued an order granting, in part, Natural Gas Clearinghouse's (NGC) motion for the establishment of generic discovery procedures applicable to all pipelines' individual Order No. 636 restructuring

proceedings.[1] Timely requests for rehearing of the June 24 order were filed by Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), Indiana Gas Company (Indiana Gas), United Distribution Companies (UDC), and Tennessee Gas Pipeline Company (Tennessee). Northern Natural Gas Company, Transwestern Pipeline Company, and Florida Gas Transmission Company (Enron) filed a timely request for clarification or, alternatively, rehearing. On July 27, 1992, the Coastal Companies (Coastal) filed a request for reconsideration.

For the reasons discussed below, the Commission will grant, in part, and deny, in part, the requests for rehearing, clarification, and reconsideration.

The June 24, 1992 Order

The Commission's June 24 order responded to NGC's request that the Commission establish generic formal discovery procedures under Subpart D of the Commission's Rules of Practice and Procedure. The Commission's order did not establish formal discovery procedures as NGC requested. Instead, in keeping with the Commission's desire to avoid unnecessary litigation, we directed the Commission's staff to submit data requests to the pipeline in each restructuring proceeding, the responses to which would be served on all parties. The Commission explained that this procedure represents a compromise to serve both the needs of the parties to have sufficient information to participate meaningfully in the restructuring process, and the need for pipelines to expend their time and resources on meeting the timetable for filing in compliance with Order No. 636. In addition, using NGC's appended generic data request as an example, the June 24 order provided guidance to staff regarding the content of the data requests. Finally, the order informed the parties how the Commission will resolve any disputes that may arise among the parties regarding the need for information beyond staff's data requests. The Commission will discuss below each rehearing issue raised.

Discussion

1. Disputes Emanating From Pipelines' Objections to Staff's Data Requests

Enron, Coastal, and UDC complain that the June 24 order does not set forth any procedure for the resolution of disputes between pipelines and staff regarding staff's data requests. The June 24 order addresses disputes that may arise out of requests submitted to pipelines by other participants to the restructuring proceeding for information in addition to that requested by staff. The June 24 order encouraged pipelines to respond to such requests for additional data where possible and encouraged the parties to make every effort to resolve any disputes concerning such requests informally. However, the Commission stated that if such requests could not be resolved informally, the party seeking additional data should present its request to the Commission in its response to the pipeline's compliance filing. The Commission stated that it would not consider requests for more information until after the compliance filing is made so that the Commission can evaluate the relevance of the request and determine what, if any, further procedures must be established to acquire the relevant information.

The Commission believes that pipelines' objection to the staff's data requests should be dealt with in a similar manner. The time period between the submission of staff's data requests and the compliance filing dates is short, and the Commission does not wish to distract the parties' attention with disputes concerning data requests during that period. Accordingly, if a pipeline objects to a particular request, it should state its objection in an initial response to give staff an opportunity to revise its request, if possible. The parties are strongly encouraged to resolve disputes concerning staff's data requests informally. The Commission will look with disfavor upon any party's failure to comply and cooperate to the maximum extent possible with the data requests. However, if after good faith attempts to resolve the dispute are unsuccessful, then, and only then, may the pipeline withhold the requested information and submit the dispute to the Commission at the time it makes its Order No. 636 compliance filing. At the same time, however, as the Commission stated in Order No. 636, the "Commission staff will report to the Commission, if needed, the status of precompliance filing discussions at the public conference to assist the Commission in identifying early any problems that may be hindering the full and timely implementation of this rule." [2]

Enron requests the Commission to clarify that the June 24 order does not prejudge the merits of any dispute emanating from staff's data requests. Enron objects to several specific items contained in NGC's sample data requests, and urges the Commission to review the appropriateness of the request at the time it is brought to the Commission's attention for resolution. In the June 24 order, the Commission provided guidance to staff with respect to the content of the data requests to pipelines. The June 24 order should not be interpreted as an endorsement of each aspect of NGC's data request, nor as a directive to staff that it should adopt each aspect of NGC's data request on a generic basis. The Commission has directed staff to tailor its data requests to the individual pipelines and the particular circumstances of each case. As set forth above, the Commission will address the merits of disputes emanating from staff's data requests after the pipeline has made its compliance filing. However, the Commission will look with disfavor upon any party's failure to comply and cooperate to the maximum extent possible with the data exchange that is needed to facilitate the Order No. 636 compliance process.

2. Service of Data Request Responses

Enron, Columbia, Tennessee, and Coastal assert that it would be unduly onerous, burdensome, and costly to require the service on all parties of all data responses in these proceedings. For example, Enron asserts that it would be extremely costly and burdensome to attempt to reproduce such documents as large-scale system maps and flow diagrams for hundreds of participants. These parties suggest that as an altenative to formal service of all materials on all parties, the Commission should allow pipelines to otherwise make responses to data requests publicly available. Columbia, Tennessee, and Coastal submit that the Commission could ease the expenses associated with the reproduction and mailing of staff data requests by limiting service of responses to the data requests to Commission staff only, and by permitting pipelines to establish a centrally located repository for the responses. Columbia also suggests that the use of electronic media for transmitting the data could also be used, to the extent possible, in lieu of the requirement of service.

The Commission emphasizes the importance of giving every party the opportunity to participate in the restructuring proceedings. Further, it is

[1] 59 FERC ¶ 61,351 (1992).

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939, at p. 30,465 (April 8, 1992).

consistent with the Commission's *ex parte* regulations to require that any material provided to the Commission's advisory staff be made available to all parties in the proceeding. The procedures established in the June 24 order are designed to be significantly less burdensome to pipelines than formal discovery, in which the pipeline would be obligated to respond to requests from more than one source, and the Commission has directed staff to minimize the burden where possible. However, the Commission recognizes that some materials requested by staff, such as system maps and flow diagrams, can be costly to reproduce and ship. Therefore, copies of these materials may be kept available as suggested by petitioners, in a readily accessible location, instead of being served on all parties. The Commission also encourages pipelines to make available to their customers materials that may be on file at the Commission but easier for customers to access at pipelines' headquarters. Pipelines must furnish to all parties copies of the remaining data requested by staff unless the parties can agree to alternative arrangements. For example, pipelines may develop lists identifying which intervenors are interested in receiving certain types of materials. As the Commission stated in the June 24 order, exchanges of data may be made by electronic mail or any other means acceptable to the parties.

3. The APA and Paperwork Reduction Act

Tennessee requests that Commission to withdraw the June 24 order and issue a new notice initiating a comment period to allow pipelines to present easier discovery procedures and reduce the paperwork resulting from the Commission's new procedures, or adopt a less burdensome alternative. Tennessee alleges that the procedures established in the June 24 order are invalid as a matter of law because the Commission did not follow the notice and comment procedures required by the Administrative Procedures Act (APA).[3] Tennessee further asserts that the June 24 order violates the Paperwork Reduction Act.[4] Tennessee submits that the procedures established by the Commission could easily require each pipeline to produce hundreds of thousands of pages to the parties in this restructuring proceeding, most of which will not be read. Tennessee argues that this contravenes the purpose of the Paperwork Reduction Act, as well as the Act's requirement that the Director of the Office of Management and Budget be provided with the required information necessary to approve or disapprove the Commission's data collection requirements.

The Commission disagrees with both arguments. The June 24 order is not subject to the notice and comment requirements of the APA because it merely delegates to the Commission's staff the authority to obtain the necessary information to implement Order No. 636. Such determinations of procedure are within the Commission's discretion under APA section 553(b)(A). Consistent with the Office of Management and Budget's regulations,[5] the Commission included in the NOPR and in Order No. 636 estimates of the public reporting burden associated with pipeline restructuring. The anticipated reporting burden in Order No. 636 allows for the typical reporting burdens associated with rate cases, including searching existing data sources, gathering and maintaining the data needed, and filing this information with the Commission. The June 24 order does not increase the substantive burden on the public beyond what was contemplated in Order No. 636; instead, it establishes procedures for the implementation of some of the rule's provisions. Furthermore, the Natural Gas Act provides the Commission with broad data collection authority in the administration of the Act.[6]

Commenters to NGC's motion and petitioners here have described an onslaught of thousands of data requests to pipelines from parties to restructuring proceedings. The Commission does not believe that this will be the case. The same basic information is needed by all parties to restructuring proceedings, and providing information to one will likely satisfy others. The Commission believes that it is in the public interest to bring order to this process so that restructuring can proceed according to schedule.

4. Need for Discovery

Coastal asserts that the Commission erred by not denying NGC's motion entirely on the basis that the discovery process is inappropriate at this stage of the restructuring proceedings. Coastal submits that the voluntary exchange of information currently occurring in restructuring proceedings is sufficient to accomplish the purpose of allowing interested parties to participate in the formation of the pipeline's tariff. Coastal argues that the imposition of the procedures set forth in the June 24 order unnecessarily compounds, complicates, and delays the pipeline's ability to comply with the procedural schedule mandated by Order No. 636. Coastal submits that since neither staff nor the parties to the restructuring proceedings have any procedural or substantive right to object, prior to filing, to anything the pipeline wants to put in into the tariff, there is no justification for the Commission's action in the June 24 order. Coastal also states that questions regarding the pipeline's methods of compliance with Order No. 636 cannot be answered because the terms of compliance will change as the pipeline discusses and negotiates with its customers and other interested parties.

The Commission agrees with Coastal that formal discovery is not necessary at this stage, and the Commission has not established formal discovery procedures here. The June 24 order simply establishes a procedure by which sufficient information can be exchanged and disseminated for parties to participate meaningfully in restructuring discussions to the extent a more formalized structure is needed in individual cases. While the voluntary exchange of information prior to the June 24 order may have been working well in some cases, it does not appear to have been efficient and orderly in others.

Coastal's assertion that neither staff nor the parties have any procedural or substantive right to object, prior to filing, to anything the pipeline wants to put into its tariff constitutes a collateral attack against Order No. 636 itself. The procedures established in Order No. 636 were structured in order to facilitate the Commission's intention "to rely initially on the parties in the restructuring proceedings on each pipeline system to work out the details of compliance with this rule.[7] To that end, the Commission instituted restructuring procedures for each pipeline in the final rule. The Commission stated that the "process of implementation thus begins with the issuance of this order and notice." [8] Interested parties were required to file motions to intervene in the individual pipeline proceedings. As parties, they are within their rights to request information from the pipeline in order to fully understand its proposal and to object to the pipeline's proposal during the restructuring discussions.

[3] 5 U.S.C. 553 (b) and (d).

[4] 44 U.S.C. 3501, *et seq.*

[5] 5 CFR part 1320.

[6] 15 U.S.C. 717(g), (i), and (m) (1988).

[7] Id. at 30,463.

[8] Id. at 30,462.

5. Hearing Requirement Under Section 7 of the NGA

Indiana Gas asserts that the order erroneously fails to provide for a hearing and formal discovery procedures which are necessary to provide parties the information required to effectively participate in the restructuring proceedings. Indiana Gas argues that an abandonment of sales service by an interstate pipeline requires the Commission, pursuant to section 7(b) of the NGA, to conduct a hearing and make findings that the public convenience and necessity permit the abandonment. Indiana Gas submits that formal discovery under Subpart D of the Commission's Rules of Practice and Procedure, which provides for discovery in proceedings set for hearing, is therefore also required in the restructuring proceedings.

Indiana Gas is incorrect. This argument constitutes a collateral attack on Order No. 636 with respect to the Commission's use of a rulemaking proceeding to authorize abandonment. The Commission has authority to generically authorize abandonment without trial-type hearings.[9] Moreover, it is not the Commission's practice to establish evidentiary hearings or formal discovery procedures in abandonment cases. Instead, the Commission frequently directs staff to submit data requests to applicants, much as it has done here. The Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if material facts in dispute cannot be resolved on the basis of the written record; it is premature to assume that factual disputes exist at this stage of the proceedings.

6. Pending Section 4 Rate Cases

Tennessee submits that the Commission's requirement that staff prepare data requests and monitor pipeline responses will divert staff and pipeline resources from pending section 4 rate cases and jeopardize prompt resolution of those cases in violation of NGA section 4. While we appreciate Tennessee's concern for the allocation of Commission resources, the Commission rejects Tennessee's argument. Staff and pipelines would have been engaged in similar pursuits as part of the routine case load that, if not for Order No. 636, would otherwise have resulted from required rate proceedings. In any event, the Commission has sufficient staff available at this time to continue processing rate cases that examine cost of service, and restructuring cases that examine other issues, simultaneously.[10]

7. Data Requests Other Than Those Submitted to the Pipelines by Staff

UDC submits that the Commission erred in not requiring staff to accept and forward to the pipeline requests for discovery tendered by other parties. UDC asserts that if the staff does not transmit a party's questions, a party should have a right to request the information of the pipeline directly and to resolve any disputes through more formal means, if necessary. UDC suggests that the Commission designate its administrative law judges as discovery judges with a mandate to supervise expedited discovery, before and after the compliance filings.

The June 24 order allows parties to request information directly from the pipeline, and it also provides for the Commission to resolve disputes formally. The Commission does not find it necessary to designate administrative law judges to handle these disputes.

Enron expresses concern that parties to the restructuring proceedings could use their own data requests to hamper negotiations and impede the pipeline's ability to meet the procedural timetable set forth in Order No. 636. Enron submits that it is time-consuming to review and respond to hundreds, if not thousands, of data requests. Enron therefore requests the Commission to clarify that the participants' data requests to the pipeline must not be redundant with staff's data requests and that the Commission will scrutinize closely the relevancy and burden of data requests submitted by participants.

One of the objectives of the June 24 order was to streamline the restructuring process by providing all participants with the necessary relevant information is a timely fashion, and by requiring pipelines to respond to requests from only one source. The June 24 order establishes procedures and provides guidance for implementation as contemplated in Order No. 636, wherein the Commission stated that it "will use procedures designed to achieve the most expeditious resolution of any contested issues raised with respect to the restructuring filings" [11] and that it "will continue to provide direction and guidance for fully implementing the policies reflected by the requirements of this rule." [12] The Commission's direction to Staff in the June 24 order is that data requests be designed to elicit only the type of information that the Commission considers necessary to support the pipelines' proposals so that the parties can participate fully in the restructuring discussions. In addition, they are to be designed to allow pipelines and participants to proceed according to the procedural timetable established in Order No. 636. The Commission expects that the Staff's data requests will elicit responses which will provide sufficient support for pipelines' proposals. To the extent other participants require additional information which was not requested by Staff, the June 24 order encourages pipelines to respond to such additional data requests where possible and to attempt to resolve any disputes on an informal basis. The pipeline may also inform parties that certain requested information has already been produced. The Commission stated in the June 24 order that it does not intend the production of the data to be requested to provide a justification to delay compliance with Order No. 636. Nor does the Commission intend for participants to abuse the procedures established in that order in an attempt to delay the process of implementation. The Commission directed Staff to assist the parties in resolving any disputes. One way of providing such assistance would be to point out where the additional data request duplicates the Staff data request or is unnecessary or overly broad. As stated in the June 24 order, the Commission will review any data request disputes among parties to restructuring proceedings after the compliance filings have been made.

Enron further requests the Commission to clarify that pipelines may request data from other participants. Enron maintains that it may be necessary for pipelines to obtain data, such as operational information, from other participants in restructuring proceedings. The Commission agrees that pipelines may need certain information to proceed with restructuring, and nothing in the June 24

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[9] See *Mobil Oil Exploration & Producing Southeast Inc. v. United Distribution Companies*, 111 S.Ct. 615 (1991); *Associated Gas Distributor v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied sub nom., Interstate Natural Gas Association of America v. FERC*, 485 U.S. 1006 (1988).

[10] See, *e.g.*, KN Energy, Inc., 60 FERC ¶61,042 (1992); Transcontinental Gas Pipeline Corporation, 59 FERC ¶61,232 (1992); Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, 59 FERC ¶61,261 (1992).

[11] Id. at p. 30,467.

[12] Id. at p. 30,468.

order precludes pipelines from requesting that information. However, that information is not of the detailed type needed by potential customers. Restructuring proceedings are not being litigated in a hearing, and hostile exchanges of discovery requests are not the appropriate model here. Instead, the restructuring process requires cooperation from all sides. Accordingly, the Commission will not establish procedures for such data requests.

Finally, the Commission expects all parties to the restructuring proceedings to participate promptly, fully, and in good faith, to meet the established compliance schedule. As the Commission stated in Order No. 636:

> To a large extent, the date by which each pipeline fully implements the restructuring required by this rule will depend on the diligence and good faith of the pipeline and interested parties. The Commission has established deadlines for filings and has provided direction for making those filings. The Commission will continue to provide direction and guidance for fully implementing the policies reflected by the requirements of this rule. The Commission respects the rights of pipelines and interested parties to differ over how these policies should best be implemented on a particular pipeline system. However, the Commission will not abide recalcitrance in the restructuring proceedings. If the pipeline's filings are not in compliance with the requirements of this rule, and the pipeline and interested parties cannot resolve differences over what is required to bring the pipeline into full compliance, the Commission will resolve the disputes on the merits. And once the Commission has determined how this rule must be implemented on a particular pipeline system, it will bring the full panoply of its enforcement resources to bear to ensure compliance with its decision.[13]

We hereby remind the pipelines and all interested parties that failure to participate promptly, meaningfully, and in good faith in the restructuring proceedings will not be tolerated.

The Commission Orders

The requests for clarification, rehearing, and reconsideration are granted, in part, and denied, in part, as discussed in the body of this order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–20436 Filed 8–25–92; 8:45 am]

BILLING CODE 6717–01–M

[13] Id. at p. 30,468.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8429]

RIN 1545–AO49

General Rule for Taxable Year of Inclusion—Election to Include Crop Insurance Proceeds in Gross Income in the Taxable Year Following the Taxable Year of Destruction or Damage

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document finalizes without change temporary regulations relating to the applicability of section 451(d) of the Internal Revenue Code (regarding the taxable year of inclusion for crop insurance proceeds) to certain federal payments made to farmers. The regulations implement the intent with which section 451(d) was initially enacted by treating qualifying disaster relief payments from the Federal Government as crop insurance proceeds for purposes of section 451(d).

DATES: This regulation is effective August 26, 1992 and § 1.451–6 applies to payments received after December 31, 1973.

FOR FURTHER INFORMATION CONTACT: Douglas Fahey, 202–535–5983 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1990, the Internal Revenue Service published in the **Federal Register** temporary regulations (T.D. 8289) and a notice of proposed rulemaking (IA–012–90) under section 451(d) of the Internal Revenue Code (Code). By cross-reference to the temporary regulations, the notice proposed to clarify that federal payments received as a result of (a) destruction or damage to crops caused by drought, flood, or any other natural disaster or (b) the inability to plant crops because of such a natural disaster, will be treated as insurance proceeds received as a result of destruction or damage to crops for purposes of section 451(d) of the Code. The Internal Revenue Service received one written public comment on the proposed regulations. After consideration of the written comment, the Service adopts the proposed regulations as final regulations in this Treasury decision. A more complete explanation of the policy reasons underlying the proposed and temporary regulations is set forth in the preamble to the temporary regulations.

Public Comment

The one public comment that was received on the proposed regulations indicated that many farmers filed their 1989 returns on or before March 1, 1990, and did not take the temporary and proposed regulations into account on those returns. The commentator requested that farmers be allowed an optional method of either including or deferring 1989 federal disaster payments.

The Service and the Treasury Department believe that Notice 90–28, 1990–1 C.B. 339, which provides farmers with guidance and procedures to follow with respect to 1989 federal disaster payments for taxable years ending before April 1, 1990, addresses this concern. Under Notice 90–28, taxpayers have the option for these taxable years of making an election under section 451(d) that either (i) covers crop insurance proceeds but does not cover payments received under the Disaster Assistance Act of 1989, or (ii) covers both crop insurance proceeds and payments received under the Disaster Assistance Act of 1989. The provisions of Notice 90–28 have not been incorporated into the final regulations to avoid any confusion for years to which the notice does not apply. Nevertheless, Notice 90–28 remains effective for the circumstances considered therein.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on the impact of the regulations on small business.

Drafting Information

The principal author of these regulations is P. Val Strehlow of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal

Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.451-1 Through 1.458-10

Accounting, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.451-6 is amended by revising paragraph (a)(1) to read as follows:

§ 1.451-6 Election to include crop insurance proceeds in gross income in the taxable year following the taxable year of destruction or damage.

(a) *In general.* (1) For taxable years ending after December 30, 1969, a taxpayer reporting gross income on the cash receipts and disbursements method of accounting may elect to include insurance proceeds received as a result of the destruction of, or damage to, crops in gross income for the taxable year following the taxable year of the destruction or damage, if the taxpayer establishes that, under the taxpayer's normal business practice, the income from those crops would have been included in gross income for any taxable year following the taxable year of the destruction or damage. However, if the taxpayer receives the insurance proceeds in the taxable year following the taxable year of the destruction or damage, the taxpayer shall include the proceeds in gross income for the taxable year of receipt without having to make an election under section 451(d) and this section. For the purposes of this section only, federal payments received as a result of destruction or damage to crops caused by drought, flood, or any other natural disaster, or the inability to plant crops because of such a natural disaster, shall be treated as insurance proceeds received as a result of destruction or damage to crops. The preceding sentence shall apply to payments that are received by the taxpayer after December 31, 1973.

* * * * *

§ 1.451-6T [Removed]

Par. 3. Section 1.451-6T is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: July 23, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-20088 Filed 8-25-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[T.D. 8426]

RIN 1545-AB48

Certain Returned Magazines, Paperbacks or Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to a method of accounting for certain returns of magazines, paperbacks, or records. Changes were made in the applicable law by the Revenue Act of 1978. The regulations provide the public with guidance needed to comply with the Act and would affect all taxpayers that elect to use the method of accounting for their trades or businesses of selling magazines, paperbacks, or records (including videos).

DATES: This regulation is effective for taxable years beginning after August 31, 1984. However, taxpayers may rely on the provisions of § 1.458-1 (a) through (f) in taxable years beginning after September 30, 1979.

FOR FURTHER INFORMATION CONTACT: Grant Gabriel, (202) 622-4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545-0879 and 1545-0152. The estimated average annual burden per recordkeeper is 25 minutes.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 458 of the Internal Revenue Code. These amendments reflect the changes made by section 372 of the Revenue Act of 1978 (92 Stat. 2860) and are issued under the authority contained in sections 7805 and 458 (b)(8) and (e)(5) of the Internal Revenue Code (68A Stat. 917; 92 Stat. 2861-2; 26 U.S.C. 7805, 458 (b)(8) and (e)(5)). A public hearing was held on October 16, 1991.

In general, section 372 of the Revenue Act of 1978 permits a taxpayer in the trade or business of selling magazines, paperbacks, or records to use a special method of accounting for the return of magazines, paperbacks, or records sold before the end of the taxable year and returned before the close of the merchandise return period for that taxable year. This method of accounting is available only to those taxpayers that use the accrual method of accounting for the trade or business of selling magazines, paperbacks, or records and that make an election to use section 458. Under this section, a taxpayer may elect to exclude from gross income amounts attributable to the qualified sale of magazines, paperbacks, or records provided the merchandise was sold before the end of the taxable year and returned before the close of the merchandise return period. The exclusion is available only if the original sale was a qualified sale. In order to be a qualified sale, the taxpayer must have, at the time of the sale, a legal obligation to adjust the sales price of the merchandise because of the purchaser's failure to resell it. Section 458 also provides special accounting rules for treatment of the transitional adjustment resulting from the section 458 election. The regulations contain rules that determine how and when a suspense account established under section 458(e) must be taken into account by the transferee in the case of certain transactions where there is nonrecognition of gain or loss to either party because of the application of subchapter C of the Internal Revenue Code. These rules apply generally to

transactions where there is a transfer of substantially all the assets of a trade or business in which paperbacks or records are sold. In general, the principles of section 381 and § 1.381(c)(4)–1 will be applied. The regulations also require a cost of goods sold offset against sales revenue in determining the amount of income excluded from gross income under section 458.

Explanation of Changes

Definition of Magazine and Record

In response to suggestions from commentators, changes were made in the definitions of "magazine" and "record." First, the definition of magazine was revised to reflect the treatment of "annuals" or "oneshots"—supplements to monthly or weekly periodicals that are issued annually—as magazines. These annual supplements are issued in basically the same format and appearance as magazines issued at regular intervals. To be treated as a magazine under section 458 of the Code, the annual publications must relate by title or subject matter to a magazine and must otherwise qualify as a magazine under section 458. Second, the definition of "record" was expanded to include video cassettes in response to commentators' concerns that the definition of "record" was unduly restrictive by its exclusion of items that also contain a visual recording. There is no evidence of any Congressional intent to exclude video cassettes at the time of the enactment of section 458 and commentators indicated that the distribution of recordings with visual content is the same as for recordings without visual content. Finally, compact discs and laser discs are specifically included as examples of "records."

Cost of Goods Sold Adjustment

Commentators argued that there should be no cost of goods sold adjustment in determining the amount of gross income excludable under section 458 of the Code. These commentators argued that § 1.458–1(g) of the proposed regulations, requiring such an adjustment in certain situations, should be omitted from the final regulations. For the reasons explained below, the Service has not adopted the commentators' recommendations. The language in section 458(a) indicates that the section 458 exclusion is determined on the basis of gross income. Under § 1.61–3(a) of the regulations, gross income of a manufacturing or merchandising trade or business is determined by subtracting cost of goods sold from sales revenue. Thus, consistent with § 1.61–3(a) rules, in determining the amount of gross income that may be excluded under section 458, it is necessary in certain situations to make a corresponding adjustment to cost of goods sold. Finally, section 446(b) and its underlying regulations require that a method of accounting clearly reflect income. In the opinion of the Commissioner, for those situations prescribed in § 1.458–1(g), the cost of goods sold adjustment is necessary to clearly reflect income.

The regulations have been revised to provide examples illustrating the application of the § 1.458–1(g) cost of goods sold adjustment in determining the amount of gross income qualifying for exclusion under section 458. As in the proposed regulations, the cost of goods sold adjustment is only required in situations in which the taxpayer holds returned merchandise for resale or is entitled to a credit from its supplier. In the latter case, the amount of the required adjustment is equal to the amount of the taxpayer's credit from its supplier.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Section 7805(f) does not apply because the proposed regulations were issued prior to the effective date of section 7805(f).

Drafting Information

The principal author of these regulations is Grant Gabriel of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.451–1 Through 1.458–10

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended in part by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.458–1 also issued under 26 U.S.C. 458. * * *

Par. 2. New § 1.458–1 is added to read as follows:

§ 1.458–1 Exclusion for certain returned magazines, paperbacks, or records.

(a) *In general*—(1) *Introduction.* For taxable years beginning after September 30, 1979, section 458 allows accrual basis taxpayers to elect to use a method of accounting that excludes from gross income some or all of the income attributable to qualified sales during the taxable year of magazines, paperbacks, or records, that are returned before the close of the applicable merchandise return period for that taxable year. Any amount so excluded cannot be excluded or deducted from gross income for the taxable year in which the merchandise is returned to the taxpayer. For the taxable year in which the taxpayer first uses this method of accounting, the taxpayer is not allowed to exclude from gross income amounts attributable to merchandise returns received during the taxable year that would have been excluded from gross income for the prior taxable year had the taxpayer used this method of accounting for that prior year. (See paragraph (e) of this section for rules describing how this amount should be taken into account.) The election to use this method of accounting shall be made in accordance with the rules contained in section 458(c) and in § 1.458–2 and this section. A taxpayer that does not elect to use this method of accounting can reduce income for returned merchandise only for the taxable year in which the merchandise is actually returned unsold by the purchaser.

(2) *Effective date.* While this section is generally effective only for taxable years beginning after August 31, 1984, taxpayers may rely on the provisions of paragraphs (a) through (f) of this section in taxable years beginning after September 30, 1979.

(b) *Definitions*—(1) *Magazine.* "Magazine" means a publication, usually paper-backed and sometimes illustrated, that is issued at regular intervals and contains stories, poems,

articles, features, etc. This term includes periodicals, but does not include newspapers or volumes of a single publication issued at various intervals. However, volumes of a single publication that are issued at least annually, are related by title or subject matter to a magazine, and would otherwise qualify as a magazine, will be treated as a magazine.

(2) *Paperback.* "Paperback" means a paperback book other than a magazine. Unlike a hardback book, which usually has stiff front and back covers that enclose pages bound to a separate spine, a paperback book is characterized by a flexible outer cover to which the pages of the book are directly affixed.

(3) *Record.* "Record" means a disc, tape, or similar item on which music, spoken or other sounds are recorded. However, the term does not include blank records, tapes, etc., on which it is expected the ultimate purchaser will record. The following items, provided they carry pre-recorded sound, are examples of "records": audio and video cassettes, eight-track tapes, reel-to-reel tapes, cylinders, and flat, compact, and laser discs.

(4) *Qualified sale.* In order for a sale to be considered a qualified sale, both of the following conditions must be met:

(i) The taxpayer must be under a legal obligation (as determined by applicable State law), at the time of sale, to adjust the sales price of the magazine, paperback, or record on account of the purchaser's failure to resell it; and

(ii)The taxpayer must actually adjust the sales price of the magazine, paperback, or record to reflect the purchaser's failure to resell the merchandise. The following are examples of adjustments to the sales price of unsold merchandise: Cash refunds, credits to the account of the purchaser, and repurchases of the merchandise. The adjustment need not be equal to the full amount of the sales price of the item. However, a markdown of the sales price under an agreement whereby the purchaser continues to hold the merchandise for sale or other disposition (other than solely for scrap) does not constitute an adjustment resulting from a failure to resell.

(5) *Merchandise return period*—(1) *In general.* Unless the taxpayer elects a shorter period, the "merchandise return period" is the period that ends 2 months and 15 days after the close of the taxable year for sales of magazines and 4 months and 15 days after the close of the taxable year for sales of paperbacks and records.

(ii) *Election to use shorter period.* The taxpayer may select a shorter merchandise return period than the applicable period set forth in paragraph (b)(5)(i) of this section.

(iii) *Change in merchandise return period.* Any change in the merchandise return period after its initial establishment will be treated as a change in method of accounting.

(c) *Amount of the exclusion*—(1) *In general.* Except as otherwise provided in paragraph (g) of this section, the amount of the gross income exclusion with respect to any qualified sale is equal to the lesser of—

(i) The amount covered by the legal obligation referred to in paragraph (b)(4)(i) of this section; or

(ii) The amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(2) *Price adjustment in excess of legal obligation.* The excess, if any, of the amount described in paragraph (c)(1)(ii) of this section over the amount described in paragraph (c)(1)(i) of this section should be excluded in the taxable year in which it is properly accruable under section 461.

(d) *Return of the merchandise*—(1) *In general.* (i) The exclusion from gross income allowed by section 458 applies with respect to a qualified sale of merchandise only if the seller receives, before the close of the merchandise return period, either—

(A) The physical return of the merchandise; or

(B) Satisfactory evidence that the merchandise has not been and will not be resold (as defined in paragraph (d)(2) of this section).

(ii) For purposes of this paragraph (d), evidence of a return received by an agent of the seller (other than the purchaser who purchased the merchandise from the seller) will be considered to be received by the seller at the time the agent receives the merchandise or evidence.

(2) *Satisfactory evidence.* Evidence that merchandise has not been and will not be resold is satisfactory only if the seller receives—

(i) Physical return of some portion of the merchandise (e.g., covers) provided under either the agreement between the seller and the purchaser or industry practice (such return evidencing the fact that the purchaser has not and will not resell the merchandise); or

(ii) A written statement from the purchaser specifying the quantities of each title not resold, provided either—

(A) The statement contains a representation that the items specified will not be resold by the purchaser; or

(B) The past dealings, if any, between the parties and industry practice indicate that such statement constitutes a promise by the purchaser not to resell the items.

(3) *Retention of evidence.* In the case of a return of merchandise (described in paragraph (d)(1)(i)(A) of this section) or portion thereof (described in paragraph (d)(2)(i) of this section), the seller has no obligation to retain physical evidence of the returned merchandise or portion thereof, provided the seller maintains documentary evidence that describes the quantity of physical items returned to the seller and indicates that the items were returned before the close of the merchandise return period.

(e) *Transitional adjustment*—(1) *In general.* An election to change from some other method of accounting for the return of magazines, paperbacks, or records to the method of accounting described in section 458 is a change in method of accounting that requires a transitional adjustment. Section 458 provides special rules for transitional adjustments that must be taken into account as a result of this change. See paragraph (e)(2) of this section for special rules applicable to magazines and paragraphs (e) (3) and (4) of this section for special rules applicable to paperbacks and records.

(2) *Magazines: 5-year spread of decrease in taxable income.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned magazines for a taxable year, section 458(d) and this paragraph (e)(2) provide a special rule for taking into account any decrease in taxable income resulting from the adjustment required by section 481(a)(2). Under these provisions, one-fifth of the transitional adjustment must be taken into account in the taxable year of the change and in each of the 4 succeeding taxable years. For example, if the application of section 481(a)(2) would produce a decrease in taxable income of $50 for 1980, the year of change, then $10 (one-fifth of $50) must be taken into account as a decrease in taxable income for 1980, 1981, 1982, 1983, and 1984.

(3) *Suspense account for paperbacks and records*—(i) *In general.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned paperbacks and records for a taxable year, section 458(e) provides that, in lieu of applying section 481, an electing taxpayer must establish a separate suspense account for its paperback business and its record business. The initial opening balance of the suspense account is described in paragraph (e)(3)(ii)(A) of this section. An initial adjustment to gross income for the year

of election is described in paragraph (e)(3)(ii)(B) of this section. Annual adjustments to the suspense account are described in paragraph (e)(3)(iii)(A) of this section. Gross income adjustments are described in paragraph (e)(3)(iii)(B) of this section. Examples are provided in paragraph (e)(4) of this section. The effect of the suspense account is to defer all, or some part, of the deduction of the transitional adjustment until the taxpayer is no longer engaged in the trade or business of selling paperbacks or records, whichever is applicable.

(ii) *Establishing a suspense account*—(A) *Initial opening balance*. To compute the initial opening balance of the suspense account for the first taxable year for which an election is effective, the taxpayer must determine the section 458 amount (as defined in paragraph (e)(3)(ii)(C) of this section) for each of the three preceding taxable years. The initial opening balance of the account is the largest of the section 458 amounts.

(B) *Initial year adjustment*. If the initial opening balance in the suspense account exceeds the section 458 amount (as defined in paragraph (e)(3)(ii)(C) of this section) for the taxable year immediately preceding the year of election, the excess is included in the taxpayer's gross income for the first taxable year for which the election was made.

(C) *Section 458 amount*. For purposes of paragraph (e)(3)(ii) of this section, the section 458 amount for a taxable year is the dollar amount of merchandise returns that would have been excluded from gross income under section 458(a) for that taxable year if the section 458 election had been in effect for that taxable year.

(iii) *Annual adjustments*—(A) *Adjustment to the suspense account*. Adjustments are made to the suspense account each year to account for fluctuations in merchandise returns. To compute the annual adjustment, the taxpayer must determine the amount to be excluded under the election from gross income under section 458(a) for the taxable year. If the amount is less than the opening balance in the suspense account for the taxable year, the balance in the suspense account is reduced by the difference. Conversely, if the amount is greater than the opening balance in the suspense account for the taxable year, the account is increased by the difference, but not to an amount in excess of the initial opening balance described in paragraph (e)(3)(ii)(A) of this section. Therefore, the balance in the suspense account will never be greater than the initial opening balance in the suspense account determined in paragraph (e)(3)(ii)(A) of this section. However, the balance in the suspense account after adjustments may be less than this initial opening balance in the suspense account.

(B) *Gross income adjustments*. Adjustments to the suspense account for years subsequent to the year of election also produce adjustments in the taxpayer's gross income. Adjustments which reduce the balance in the suspense account reduce gross income for the year in which the adjustment to the suspense account is made. Adjustments which increase the balance in the suspense account increase gross income for the year in which the adjustment to the suspense account is made.

(4) *Example*. The provisions of paragraph (e)(3) of this section may be illustrated by the following example:

Example: (i) X corporation, a paperback distributor, makes a timely section 458 election for its taxable year ending December 31, 1980. If the election had been in effect for the taxable years ending on December 31, 1977, 1978, and 1979, the dollar amounts of the qualifying returns would have been $5, $8, and $6, respectively. The initial opening balance of X's suspense account on January 1, 1980, is $8, the largest of these amounts. Since the initial opening balance ($8), the larger than the qualifying returns for 1979 ($6), the initial adjustment to gross income for 1980 is $2 ($8–$6).

(ii) X has $5 in qualifying returns for its taxable year ending December 31, 1980. X must reduce its suspense account by $3, which is the excess of the opening balance ($8) over the amount of qualifying returns for the 1980 taxable year ($5). X also reduces its gross income for 1980 by $3. Thus, the net amount excludable from gross income for the 1980 taxable year after taking into account the qualifying returns, the gross income adjustment, and the initial year adjustment is $6 ($3+$5−$2).

(iii) X has qualifying returns of $7 for its taxable year ending December 31, 1981. X must increase its suspense account balance by $2, which is the excess of the amount of qualifying returns for 1981 ($7) over X's opening balance in the suspense account ($5). X must also increase its gross income by $2. Thus, the net income excludable for gross income for the 1981 taxable year after taking into account the qualifying returns and the gross income adjustment is $5 ($7–$2).

(iv) X has qualifying returns of $10 for its taxable year ending December 31, 1982. The opening balance in X's suspense account of $7 will not be increased in excess of the initial opening balance ($8). X must also increase gross income by $1. Thus, the net amount excludable from gross income for the 1982 taxable year is $9 ($10–$1).

(v) This example is summarized by the following table:

	Years Ending December 31					
	1977	1978	1979	1980 [1]	1981	1982
Facts:						
Qualifying returns during merchandise return period for the taxable year	$5	$8	$6	$5	$7	$10
Adjustment to suspense account:						
Opening balance				$8	$5	$7
Addition to account [2]					2	1
Reduction to account [3]				(3)		
Opening balance for next year				$5	$7	$8
Amount excludable from income:						
Initial year adjustment				$(2)		
Amount excludable as qualifying returns in merchandise return period				5	$7	$10
Adjustment for increase in suspense account					(2)	(1)
Adjustment for decrease in suspense account				3		
Net amount excludable for the year				$6	$5	$9

[1] Year of Change.

[2] Applies when qualifying returns during the merchandise return period exceed the opening balance; the addition is not to cause the suspense account to exceed the initial opening balance.

[3] Applies when qualifying returns during the merchandise return period are less than the opening balance.

(f) *Subchapter C transactions*—(1) *General rule.* If a transfer of substantially all the assets of a trade or business in which paperbacks or records are sold is made to an acquiring corporation, and if the acquiring corporation determines its basis in these assets, in whole or part, with reference to the basis of these assets in the hands of the transferor, then for the purposes of section 458(e) the principles of section 381 and § 1.381(c)(4)–1 will apply. The application of this rule is not limited to the transactions described in section 381(a). Thus, the rule also applies, for example, to transactions described in section 351.

(2) *Special rules.* If, in the case of a transaction described in paragraph (f)(1) of this section, an acquiring corporation acquires assets that were used in a trade or business that was not subject to a section 458 election from a transferor that is owned or controlled directly (or indirectly through a chain of corporations) by the same interests, and if the acquiring corporation uses the acquired assets in a trade or business for which the acquiring corporation later makes an election to use section 458, then the acquiring corporation must establish a suspense account by taking into account not only its own experience but also the transferor's experience when the transferor held the assets in its trade or business. Furthermore, the transferor is not allowed a deduction or exclusion for merchandise returned after the date of the transfer attributable to sales made by the transferor before the date of the transfer. Such returns shall be considered to be received by the acquiring corporation.

(3) *Example.* The provisions of paragraph (f)(2) of this section may be illustrated by the following example.

Example. Corporation S, a calendar year taxpayer, is a wholly owned subsidiary of Corporation P, a calendar year taxpayer. On December 31, 1982, S acquires from P substantially all of the assets used in a trade or business in which records are sold. P had not made an election under section 458 with respect to the qualified sale of records made in connection with that trade or business. S makes an election to use section 458 for its taxable year ending December 31, 1983, for the trade or business in which the acquired assets are used. P's qualified record returns within the 4 month and 15 day merchandise return period following the 1980 and 1981 taxable years were $150 and $170, respectively. S's qualified record returns during the merchandise return period following 1982 were $160. S must establish a suspense account by taking into account both P's and S's experience for the 3 immediately preceding taxable years. Thus, the initial opening balance of S's suspense account is $170. S must also make an initial year adjustment of $10 ($170—$160), which S must include in income for S's taxable year ending December 31, 1983. P is not entitled to a deduction or exclusion for merchandise received after the date of the transfer (December 31, 1982) attributable to sales made by the transferor before the date of transfer. Thus, P is not entitled to a deduction or exclusion for the $160 of merchandise received by S during the first 4 months and 15 days of 1983.

(g) *Adjustment to inventory and cost of goods sold.* (1) If a taxpayer makes adjustments to gross receipts for a taxable year under the method of accounting described in section 458, the taxpayer, in determining excludable gross income, is also required to make appropriate correlative adjustments to purchases or closing inventory and to cost of goods sold for the same taxable year. Adjustments are appropriate, for example, where the taxpayer holds the merchandise returned for resale or where the taxpayer is entitled to receive a price adjustment from the person or entity that sold the merchandise to the taxpayer. Cost of goods sold must be properly adjusted in accordance with the provisions of § 1.61–3 which provides, in pertinent part, that gross income derived from a manufacturing or merchandising business equals total sales less cost of goods sold.

(2) The provisions of this paragraph (g) may be illustrated by the following examples. These examples do not, however, reflect any required adjustments under paragraph (e)(3) of this section.

Example 1. (i) In 1986, P, a publisher, properly elects under section 458 of the Code not to include in its gross income in the year of sale, income attributable to qualified sales of paperback books returned within the specified statutory merchandise return period of 4 months and 15 days. P and D, a distributor, agree that P shall provide D with a full refund for paperback books that D purchases from P and is unable to resell, provided the merchandise is returned to P within four months following the original sale. The agreement constitutes a legal obligation. The agreement provides that D's return of the covers of paperback books within the first four months following their sale constitutes satisfactory evidence that D has not resold and will not resell the paperback books. During P's 1989 taxable year, pursuant to the agreement, P sells D 500 paperback books for $1 each. In 1990, during the merchandise return period, D returns covers from 100 unsold paperback books representing $100 of P's 1989 sales of paperback books. P's cost attributable to the returned books is $25. No adjustment to cost of goods sold is required under paragraph (g)(1) of this section because P is not holding returned merchandise for resale. P's proper amount excluded from its 1989 gross income under section 458 is $100.

(ii) If D returns the paperback books, rather than the covers, to P and these same books are then held by P for resale to other customers, paragraph (g)(1) of this section applies. Under paragraph (g)(1), P is required to decrease its cost of goods sold by $25, the amount of P's cost attributable to the returned merchandise. The proper amount excluded from P's 1989 gross income under section 458 is $75, resulting from adjustments to sales and cost of sales [(100 × $1)—$25].

Example 2. (i) In 1986, D, a distributor, properly elects under section 458 of the Code not to include in its gross income in the year of sale, income attributable to qualified sales of paperback books returned within the specified statutory merchandise return period of four months and 15 days. D and R, a retailer, agree that D shall provide a full refund for paperback books that R purchases from it and is unable to resell. D and R also have agreed that the merchandise must be returned to D within four months following the original sale. The agreement constitutes a legal obligation. D is similarly entitled to a full refund from P, the publisher, for the same paperback books. In 1990, during the merchandise return period, R returns paperback books to D representing $100 of 1989 sales. D's cost relating to these sales is $50. Under paragraph (g)(1) of this section, D must decrease its costs of goods sold by $50. D's proper amount excluded from its 1989 gross income under section 458 is $50 resulting from adjustments to sales and costs of sales ($100—$50).

(ii) If D is instead only entitled to a 50 percent refund from P, D is required under paragraph (g)(1) of this section to decrease its costs of goods sold by $25, the amount of refund from P. D's proper amount excluded from its 1989 gross income under section 458 is $75, resulting from adjustments to sales and cost of sales ($100—$25).

Par. 3. Section 1.458–10 is redesignated as § 1.458–2.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by removing the entry for "1.458–10" and adding the following entries in the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.458–1	1545–0879

CFR part or section where identified and described	Current OMB control No.
1.458-2	1545-0152
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: July 23, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-20087 Filed 8-25-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-026A]

RIN 1218-AB20

Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; petition for administrative stay; effective date of stayed provisions.

SUMMARY: On June 1, 1992, OSHA published a Federal Register notice (57 FR 23060) administratively staying, until August 26, 1992, four provisions of the standard for Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119). These provisions included paragagh (f)—operating procedures, paragraph (h)—contractors, paragraph (j)—mechanical integrity and paragraph (l)—management of change. The notice also requested comments on whether additional time is necessary to comply with these provisions. After careful consideration of the information contained in the record as a whole, OSHA has decided that the original compliance dates are feasible and an extended administrative stay of paragraphs (f), (h), (j), and (l) of 29 CFR 1910.119 is neither necessary nor appropriate.

DATES: Paragraphs (f), (h), (j), and (l) of 29 CFR 1910.119 will become effective on August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION: On February 24, 1992, OSHA issued its final rule on Process Safety Management of Highly Hazardous Chemicals, 29 CFR 1910.119 (57 FR 6356). The final rule was scheduled effective on May 26, 1992. Since the publication of the final rule, OSHA has received a number of requests to reconsider the 90-day delayed effective date for certain provisions in the standard. Additionally, OSHA has received petitions requesting an administrative stay of certain provisions of the final rule.

A joint petition from the Chemical Manufacturers Association (CMA), the American Petroleum Institute (API), and the National Petroleum Refiners association (NPRA) (henceforth referred to as CMA, API and NPRA; Ex. 3), requested an administrative stay of the following paragraphs for the following periods of time:

(c), employee participation until August 26, 1992;
(f), operating procedures until February 26, 1994;
(h), contractors until February 26, 1993;
(i), pre-startup safety review until August 26, 1992;
(j), mechanical integrity until February 26, 1994;
(l), management of change until February 26, 1993; and
(n), emergency planning and response until August 26, 1992.

Additionally, a petition from Union Carbide Chemicals and Plastics Company Inc. (henceforth referred to as Union Carbide; Ex. 4), requested an administrative stay of paragraphs: (f)(2) and (f)(4) within the operating procedures section until December 31, 1993; (h)(2)(i) and (h)(2)(iv) within the contractor provisions until December 31, 1992; and (j)(2) through (j)(5) within the mechanical integrity section until December 31, 1993.

After review of the information submitted, OSHA decided that no extension of time was warranted for paragraph (c)—employee participation, paragraph (i)—pre-startup safety review, or paragraph (n)—emergency planning and response, and these paragraphs became effective as scheduled. However, OSHA did decide that more time was necessary to evaluate the petitions regarding the compliance dates for paragraph (f)—operating procedures, paragraph (h)—contractors, paragraph (j)—mechanical integrity, and paragraph (l)—management of change. Consequently, OSHA published a notice in the Federal Register (57 FR 23060) on June 1, 1992, announcing an administrative stay of these provisions until August 26, 1992.

The Agency also provided a 30-day comment period, ending June 30, 1992, to give the public an opportunity to comment on the need for OSHA to further stay the compliance dates of these provisions. The Agency sought detailed information on whether additional time was necessary for compliance with each of the stayed paragraphs and if so, how much additional time, with specific rationale to support such extension.

The Agency received 55 comments in response to the notice. Generally, commenters supported the position of the petitioners requesting a further stay of the effective date (e.g., Ex. 2: 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 19, 20, 22, 24, 28, 29, 32, 33, 34, 35, 38, 40, 47, 50, 51). For example, a commenter from Nalco Chemical Company (Ex. 2: 8) stated:

> NALCO agrees with the objectives of these four elements as well as the entire Process Safety Rule, but supports the petitioners request for revision of the effective dates. These revisions would allow NALCO and members of industry the time necessary to meet the specific requirements of the Process Safety Management Rule which involve efforts toward reorganizing limited resources and creating multifaceted management plans for applicability, evaluation, cultural acclimation, training, documentation systems, staffing, implementation and follow-up controls.

Additionally, a commenter from the United Refining Company (UFC; Ex. 2: 13) remarked:

> United Refining fully supports the petition submitted by API, NPRA, and CMA to delay the effective date of paragraphs (f) operating procedures, (h) contractors, (j) mechanical integrity, and (l) management of change. In our view, the petitioned effective dates give a reasonable time period for UFC to develop the procedures and management systems required to comply with the regulations.

A commenter from Taurus Energy Corp. (Ex. 2: 35) said:

> Process Safety Management makes good sense for our company. However, more time is needed to formally implement the four elements addressed in the notice.

Also, a commenter from Kerr-McGee Corporation (Ex. 2: 51) stated:

> We urge OSHA to extend compliance dates for the above noted paragraphs in order to keep from putting industry in the untenable position of striving to do the right thing but not having enough time to do it properly.

Many commenters, while supporting the need for added time, addressed additional provisions that should be stayed and, in some cases, believed fewer provisions needed to be stayed. Commenters also requested different amounts of time to comply with the stayed paragraphs. (E.g., Ex. 2: 3, 16, 18, 22, 23, 25, 26, 27, 31, 36, 37, 39, 42, 43, 44, 45, 46, 48, 49, 53, 54.)

Two commenters, the Building and Construction Trades Department, AFL–CIO (Ex. 2: 14), and the United Steelworkers of America, AFL–CIO (Ex. 2: 41), objected to the extension of the effective date of the standard.

For example, a commenter from the Building and Construction Trades Department (BCTD), AFL–CIO (Ex. 2: 14, p. 5) remarked:

* * * The BCTD believes that the process safety management standard is a vital step toward protecting employees and the public from the dangers associated with industrial processes involving highly hazardous chemicals. The promulgated standard is capable of immediate implementation, and it should be given full effect upon the expiration of the administrative stay on August 26, 1992.

A commenter from the United Steelworkers of America (Ex. 2: 41, p. 2) stated:

The United Steelworkers of America (USWA) strongly opposes any extension of time for any provision of standard 29 CFR 1910.119.

The Agency decision announced in this notice essentially reaffirms the original decision not to adopt phased-in effective dates for provisions of the Process Safety Management standard other than the requirements for process safety information—paragraph (d), and the process hazard analysis—paragraph (e).

At the time OSHA published the proposed Process Safety Management standard, the Agency specifically sought comments on what would be an appropriate timeframe in which to conduct a process hazard analysis. In addition, comments were specifically sought regarding whether other provisions should be delayed or phased in, as well as the reasons for any recommended delay (55 FR 29159). In the preamble to the final Process Safety Management standard, OSHA addressed these comments (57 FR 6360), and decided that:

* * * With the exception of allowing a phase-in period for paragraph (d), process safety information, and paragraph (e), process hazards analysis, no other phase-in period is necessary or warranted. OSHA realizes, as it does with any other newly promulgated standard, that employers will be working toward implementation of the provisions contained in the standard as quickly as possible * * * OSHA believes this schedule is practical and feasible.

The Agency specifically considered whether grounds existed for phasing in implementation of any provisions other than paragraphs (d) and (e), and rejected that option. The Agency's present decision to adhere to its previous finding that extended implementation schedules for additional provisions of the standard are unnecessary, and to therefore deny the petitions seeking additional compliance time for the operating procedures, mechanical integrity, contractor, and management of change provisions of the standard, is based on several factors which were apparent at the time the final standard was published.

First, it must be emphasized that the requirements of the four administratively stayed provisions are not new, and OSHA does not believe that industry is "starting from scratch" in terms of compliance. The Process Safety Management standard is new only in the sense that its requirements are unified under an overall comprehensive approach to process safety management. For many firms, the standard will only require that the existing elements of their process safety management procedures be incorporated into a comprehensive and holistic program, integrating technologies, procedures, and management practices. Comments to the record clearly indicate that many firms have far more than a skeletal program in place (e.g., Ex. 2: 7B, 16, 20, 30, 50).

OSHA's Regulatory Impact Analysis (Ex. 156, p. IV–5, Docket S–026), found that, as of January 1992, "compliance rates [with the requirements of the process safety management standard] vary widely across industries and provisions, but are generally above 40 percent in most industries." Given this estimated compliance rate across industries, and widespread industry familiarity with the various elements of process safety management principles, OSHA reaffirms its conclusion that with the exception of allowing a phase-in period for paragraphs concerning process safety information and process hazards analysis, no other phase-in period is necessary or warranted. Indeed, the standard relies heavily on preexisting industry guidelines for its component parts and overall approach.

It should be noted that the provisions of the standard received widespread support from the regulated community. In fact, the final standard contained no new issues; most of the provisions of the final rule were contemplated by the Clean Air Act Amendments of 1990, as well as the American Petroleum Institute Recommended Practice 750, Management of Process Hazards (API's RP 750), the Chemical Manufacturers Responsible Care Process Safety Code of Management Practices (CMA's Process Safety Code) and, the American Institute of Chemical Engineers "Guidelines for Technical Management of Chemical Process Safety" (Ex. 2: 11 and Ex. 11: 25, 17, Docket S–026, respectively).

The recommendations contained in these industry documents played an integral role in the development of the Process Safety Management standard, and convinced the Agency that the concepts of process safety management have been widely recognized as essential for several years. Taken together with (1) its finding that a substantial percentage of covered industries are generally in compliance with the requirements of the standard, and (2) enforcement experience under the General Duty Clause that has produced rapid abatement, OSHA is convinced that a further extension of the effective date of the Process Safety Management standard is not warranted.

As already noted, at the time of the proposal, OSHA sought comments on appropriate effective dates for the various provisions of the final rule. After careful evaluation of the comments, the Agency still believes that the original effective dates were correct. The Agency decided (57 FR 6360):

* * * With the exception of allowing a phase-in period for paragraph (d), process safety information, and paragraph (e), process hazards analysis, no other phase-in period is necessary or warranted. OSHA realizes, as it does with any other newly promulgated standard, that employers will be working toward implementation of the provisions contained in the standard as quickly as possible. The standard will become effective in 90 days, thereby giving employers a brief period to familiarize themselves with the provisions of the standard and begin its implementation. OSHA believes this schedule is practical and feasible.

Implicit in many of the commenters submissions is the idea that initial compliance must be perfect compliance. This, of course, ignores the continuing nature of the obligation and the on-going review and revision of efforts that is very much a part of the standard. The Process Safety Management standard requires employers to use an iterative process to improve the safety of the facility as well as to come into full compliance. The Agency agrees with the Building and Construction Trades Department of the AFL–CIO that the standard does not mandate a specific, "ideal" management system, and there is no corresponding need for an employer to "get it exactly right" the first time out before establishing any basic safety management practices and procedures as called for in the Process Safety Management standard (Ex. 2: 14, p. 3).

The Agency also agrees with commenters that employers are

expected to use available information in the employer's initial compliance efforts (e.g., Ex. 2: 7B, 11, 28). However, the standard contemplates continuing and on-going compliance efforts: Compliance audits, incident investigations, process hazard analysis recommendations, etc., will provide information with a view toward revising operating procedures as necessary to assure that they reflect proper current operating practice; employees will be provided with refresher training as necessary to safely do their job; and other safety practices and procedures called for under process safety management will be revised. That knowledge will improve and compliance will necessarily evolve under process safety management; however, this does not supply a basis for further delay.

The record shows that a large number of commenters already have in place written operating procedures (e.g., Ex. 2: 7B, 8, 11, 15, 16, 17, 19, 27, 41), mechanical integrity procedures (e.g., Ex. 2: 7B, 8, 11, 16, 17, 20, 26, 27, 29), management of change (e.g., Ex. 2: 7B, 8, 11, 15, 16, 20, 26, 27, 50), and provisions similar to the contractor provisions (e.g., Ex. 2: 16, 26, 29, 50, 51).

The following discussion will explain in more detail why the Agency has denied any further extension of these four provisions.

Operating Procedures, Paragraph (f)

Union Carbide asserts in its petition (Ex. 4) that the petrochemical industry as a whole needs more time in which to meet the specific requirements of the process safety standard. Noting that Union Carbide is still trying to bring its facilities into full compliance, it does not believe it is feasible to achieve full compliance with the provisions addressed in their petition. Specifically, Union Carbide requested a stay of paragraphs (f)(1) and (f)(4), operating procedures. Paragraphs (f)(1) and (f)(4) require the development and implementation of written operating procedures and the development and implementation of safe work practices. The operating procedures are to provide clear instructions for safely conducting activities involved in covered processes and the safe work practices are to provide for the control of hazards during operations such as opening process equipment or piping and for the control over entrance into a facility by maintenance, contractor, laboratory, or other support personnel.

Union Carbide (Ex. 4, p. 5) observed that while it already addresses virtually all of the issues most directly relevant to the safe operation of processes, changes will still be required and these changes will require a substantial amount of time. The petitioner noted that the process of revision requires a thorough review of thousands of procedures, their rewriting, their communication, training and implementation.

CMA, API and NPRA requested that paragraph (f), operating procedures, be stayed until February 26, 1994. The Petitioners observed that the development of operating procedures is one of the most important and demanding requirements of the standard. They noted that while many employers already had operating procedures, few of the procedures met the demanding requirements of the standard. Additionally, they claimed that some employers have relied upon apprentice-type training on certain operating jobs and written operating procedures may not exist.

Based on their experience implementing similar process safety management programs such as the API's RP 750 and the CMA's Process Safety Code, petitioners say they have gained an understanding of the resources and time required to implement process safety. CMA, API and NPRA concluded that there are limited human resources available, that significant time is required to effectively complete process safety, and that the activities must be carefully managed.

With regard to limited human resources, petitioners observed that few individuals at a facility are qualified or available to prepare or update operating procedures since special skills and knowledge are necessary. Oftentimes the best qualified to undertake the task is the operator of the process which means the operator may have to be away from process operation possibly for months. Thus, the employer may need to hire and train additional personnel. While some procedures can be developed on a shift, petitioners are concerned that the operator might be distracted from operating duties. If an operator is not available, then the employer must use a process engineer or a supervisor which again creates a void. Reassigning employees is not a simple thing to do and must be carefully managed and done over a significant period of time due to limited staff.

Additionally, petitioners believe that as a result of the amount of detailed knowledge and information required by paragraph (f), accomplishing the task will be a substantial effort. For example, they observed that it took one employer six months to develop quality operating procedures for one process. Even upgrading operating procedures is a substantial task.

Finally, petitioners indicated that the task must be carefully managed in order to minimize disruption to ongoing safe operations when experienced operators are reassigned, to assure a consistent high quality work product, and to complete the task within the time allowed. Petitioners contended that the task is significant, and time is needed to do it in an orderly fashion. The petitioners contend that operating procedures cannot be revised to reflect current process safety information until the process safety information package is compiled. OSHA would like to note, however, that it only expects current operating procedures to reflect current process safety information.

A comment from the Building and Construction Trades Department (Ex. 2: 14, p. 2), however, stressed that further delay of the standard would be inappropriate, and observed:

> Even under the terms and timetable of the final standard, an employer will not be required to fully comply with OSHA's process safety management standard for some time to come. This is a direct result of the fact the OSHA resolved to allow up to five years for employers to compile process safety information (section (d)) and to complete process hazard analyses (section (e)). As these sections are the critical building blocks of other components of the standard (such as the requirements for written operating procedures and training materials), these other components will necessarily be modified and augmented with later developed information and analysis.
>
> But recognizing that achievement of process safety will be an ongoing process does not justify delaying compliance with the specific components of OSHA's standard. The final standard is strongly * * * "performance oriented." The performance oriented approach to workplace safety militates for the early, rather than late, implementation of the standard. The standard does not mandate a specific, "ideal" management system, and there is no corresponding need for an employer to "get it exactly right" before establishing any safety management practices and procedures. Instead, employers have been given broad latitude to design and implement those systems and practices which are calculated to produce a safe workplace. Only within a functioning management system can employers and employees work together to test, improve, and enhance the form and content of particular safety practices. In order to create the structures through which employers, employees and third parties can act to improve safety practices in the industry, employers must begin immediately to comply with every component of the standards.

The United Steelworkers of America (Ex. 2: 41, p. 3) remarked:

> This paragraph (f) only requires employers to develop and implement operating procedures that provide clear instructions for safely conducting activities involved in each

covered process. This section merely calls for procedures to operate the facility.

It has been the experience of the USWA when dealing with chemical companies and others that all of them have "operating procedures" in writing detailing how to operate the facility. The industry comments * * * "Many employers had operating procedures, but few met the demanding requirements of the standard." In the first place, the USWA believes all had written operating procedures that have been utilized for years. Therefore additional time is not necessary.

In the second place, the standard demands no more than clear instruction on how to safely operate the process. It is ludicrous for the industry to allege that they do not have "clear instructions" on how to operate their facilities. If they do not have them, then how have they been operating for the past 50 plus years? Further is it absolutely ridiculous for the industry to allege that some of them "have relied for years upon apprentice-type training on certain operating jobs, *and may not have written operating procedures* in all cases" (emphasis added). If they have nothing in writing, how did they train the first operators? How are they consistent in training new hires and retraining experienced operators?

OSHA agrees with these comments. The great majority of employers covered by the standard either already have basis standard operating procedures in place or could implement this provision without herculean effort. OSHA realizes that some operating procedures will change over time and will probably need revision when the process safety information is collected and the process hazard analysis is conducted. However, this does not warrant further delay. To allow processes involving highly hazardous chemicals to operate without any operating procedures until some future date would not be consistent with a safe and healthful working environment.

Contractors, Paragraph (h)

Petitioners and many commenters also requested additional time regarding the contractor provisions in the standard. CMA, API, and NPRA requested a stay of the entire paragraph and Union Carbide requested a stay of paragraphs (h)(2)(i) and (iv). Paragraph (h)(2)(i) requires that employers, when selecting a contractor, obtain and evaluate information regarding the contract employer's safety performance and programs. Paragraph (h)(2)(iv) requires employers to develop and implement safe work practices to control the entrance, presence and exit of contract employees in covered process areas.

Union Carbide inquired as to whether paragraph (h)(2)(i) applies to contractors already selected as of May 26, 1992. It observed that if it does apply to these current contractors, which in some cases may number in the hundreds, then the information cannot possibly be gathered until December 1992.

CMA, API, and NPRA observed that if employers are required to obtain and evaluate the safety performance and program of contract employers that are presently working at the site, it would take a significant amount of time since a typical refinery may have as many as 400 or more contract employers over a year. Developing an effective evaluation program and implementing it will require a considerable amount of time.

Petitioners contended that the contractor requirements are significant and will require both employers and contractors to develop and implement important new programs. These include the development of a communication package to inform contract employers of the known potential fire, explosion, or toxic release hazards. They stated that the package cannot be too detailed nor too simple; it will require careful design and testing; the use of modern communication tools will be needed; and, meetings will have to be scheduled to impart the information.

Petitioners also stated that contract employers will require a significant amount of time to comply with the training requirements. Contract employers will have to define job-specific training needs for all contract employees, then design and implement effective training programs and determine and document that contract employees understood the training. This may present a significant legal and labor management consideration.

The petitioners asserted that the training task which will require the most time is to review an employer's potential hazards and review work practices and procedures. Since documentation of training may be lacking, contract employees will need a significant amount of retraining since no grandfather clause is included. Small contractors may need to hire more personnel. For these reasons, it is important for OSHA to allow an additional 9 months to the effective date.

The Building and Construction Trades Department (Ex. 2:14, p. 4) remarked:

It is both unnecessary and unwise to postpone the effective date of section (h) of the standard. That section of the standard attempts to clarify the interdependent safety and health obligations of owners and operators of covered processes and contractors who perform jobs on or near the processes.

A contractor's obligations under section (h) could be said to be burdensome only for those contractors which have been grossly derelict in their health and safety responsibility to their employees * * * Contractors which lack effective training programs introduce significant dangers into the chemical process industry, so their poorly trained employees put themselves and all other employees at risk when working near the processes covered by the standard. It is precisely for this reason that immediate implementation of the contractor training requirements is imperative.

The standard's requirements of owner/operators provide even less cause for delay. Shouldn't every owner or operator of a covered process begin now to evaluate a contractor's safety record and safety programs before entering into a new contract for services? The fact that the owner/operator may in the future be better able to gather and evaluate safety information in the bid process does not lessen the need for all owner/operators to comply with this step at the present time.

Similarly, the owner/operator's obligation to communicate hazard information and safe work practices to contractors and their employees must not be delayed. The information required to be provided to contractors is largely a subset of information which an owner or operator must already communicate to its own employees under section (g) of the standard. Moreover, some of the hazard information which must be communicated to contractors and their employees is already mandated under the terms of OSHA's hazard communication standard. At sites where there is a potential for catastrophic releases of hazardous chemicals, the stakes are simply too high to delay the minimal exchange of information and coordination of effort between employers which is mandated by section (h) of the standard.

OSHA continues to believe that contractors working on or adjacent to a covered process, should be informed of the hazards associated with that process. The Process Safety Management standard requires contractors to be made aware of the applicable provisions of the emergency action plan before they begin such work. OSHA believes that this information is basic to the safety of contractor employees and site employees.

OSHA realizes that practices and procedures pertaining to contractor safety will continue to be enhanced and improved as the standard becomes fully implemented, but the Agency also believes that the requirements contained in this provision (paragraph (h)) need to be addressed immediately.

Regarding contractors who are already working at the site, it is not necessary to go back and evaluate their safety programs and accident history. OSHA did not intend for paragraph (h)(2)(i) to be retroactive; this provision would apply only when hiring or re-hiring a contractor.

Regarding paragraph (h)(2)(ii), which requires employers to impart hazard information to contract employers, OSHA believes that contract employers need to know the hazards relative to a process using a highly hazardous chemical sooner than later since absence of such knowledge can result in endangerment of all of those working on or near the process. Also, in paragraph (h)(2)(iii), OSHA is requiring employers to inform contractors of the emergency action procedures. While an employer may establish a program which includes enhancements such as videos etc., OSHA does not require this. OSHA merely wants employees to know what hazards they face, and what actions to take if an emergency occurs. Therefore, such information can be simply relayed to contractors without such enhancements as may later be developed.

With respect to paragraph (h)(2)(iv), the Agency agrees with the comments submitted to the final rule record by Organization Resource Counselors (ORC, Ex. 131, Docket S-026). As indicated in the Preamble to the final rule (57 FR 6387), ORC recommended that contractors be required to follow the safe work practices of the facility. ORC observed that safe work practices were to insure that those persons operating high hazard processes are cognizant of any nonroutine work that is occurring and to insure that those in responsible control of the facility are also in control of nonroutine work.

The opportunity to scrutinize and correct the performance of contractors, if necessary, is contained in paragraph (h)(2)(v) which requires an employer to periodically evaluate the performance of contract employers in fulfilling their obligations. OSHA believes that employers should evaluate contractors on site, and that some procedures must exist or could easily be developed to meet the needs right now.

Finally, OSHA sees no reason why the information required by paragraph (h)(2)(vi), regarding injuries and illnesses of contractors, cannot be collected now.

Regarding the provisions contained in (h)(3) that deal with the contract employer responsibilities, after carefully evaluating them, OSHA again does not agree with the requests for a stay. The first provision merely assures the site employer that trained individuals are working at their site on processes involving highly hazardous chemicals. This requirement does not mean a contract employer must train contract employees all over again, but rather, requires the assurance that the services offered can be delivered safely.

OSHA considers the instruction of contract employees in known potential fire, explosion, or toxic release hazards and the applicable provisions of the emergency action plan to be necessary immediately; that assurance be made that employees have understood the training that they have received; that contract employees follow the same safe work practices as site employees; and that contract employers advise the site employer of any unique hazards presented by the contract employer's work, or of any hazards found by the contract employer's work. The petitioner's statement that a typical refinery employs 400 contractors in any given year only underscores the need for promptly implementing the Process Safety Management standard's contractor provisions.

Mechanical Integrity, Paragraph (j)

Union Carbide noted in its petition that while its mechanical integrity program encompasses critical equipment, it does not cover the broad categories of equipment covered by the standard and as a consequence, it will need additional time to comply.

CMA, API and NPRA noted that developing and implementing mechanical integrity programs is as complex as developing and implementing operating procedures. It requires comprehensive programs with supporting documentation for maintenance procedures, training of maintenance personnel, equipment testing and inspection, correction of deficiencies and quality assurance. Refinery and chemical plant maintenance requires a multitude of procedures reflecting many different crafts and types of equipment. While a systematic effort has been started to identify and develop the procedures required, significant personnel resources will be needed.

Further, petitioners note that the mechanical integrity section does not provide a grandfather clause. Many employees learned their craft on the job but the documentation is not available to support their skill. Training will be based on the procedures, employers will have to evaluate where additional training is required, develop the training program, train the employees, and document the training.

While employers have inspection and testing procedures in place, most procedures will require enhancing to fully comply with the standard. These enhancements include developing or strengthening documentation of equipment inspection and test procedures, ensuring compliance with engineering practices or manufacturers recommendations, monitoring and tracking inspection and test results and strengthening systems to correct equipment deficiencies.

Finally, they observed that compliance with the quality assurance provision begins with the development or enhancement of quality assurance procedures and continues with training and the documentation of results. Petitioners concluded that the concerns expressed regarding compliance with paragraph (f), operating procedures, is also appropriate to the development and implementation of the provisions concerning mechanical integrity. That is, petitioners concluded that there are limited human resources available, that significant time is required to effectively complete process safety, and that the activity must be carefully managed.

Several commenters (e.g. Ex. 2: 7, 30, 45, 47, 49, 50, 51, 52) asserted that additional time is needed to fully implement all of the requirements contained in this provision, and that the effective date of this provision should be extended until February 26, 1994.

These commenters stated that this additional amount of time is necessary because this element of the standard contains extensive documentation requirements; formal written procedures may not exist for many tasks; test methods and inspection procedures must be specified, documented, and made a part of the written procedures; and, maintenance employees must be trained in the written maintenance procedures—some of which must yet be developed.

For example, a commenter from the American Petroleum Institute (Ex. 2: 52, p. 2) remarked:

> Like operating procedures, this is one of the most important and most demanding requirements of the standard. Complying with this element requires comprehensive programs complete with supporting documentation for maintenance procedures, training of maintenance personnel, equipment testing and inspection, correction of deficiencies, and quality assurance.

A commenter from DuPont (Ex. 2: 50, p. 5) stated:

> * * * formal written maintenance procedures do not exist for many tasks. In the past, maintenance personnel were trained to achieve a given level of basic skills.
>
> Effective mechanical integrity programs require training of maintenance personnel in both basic skills and task-specific skills, which in turn, begins with the establishment of maintenance procedures.
>
> * * * while mature equipment test and inspection programs are in place, the documentation of specific test methods and procedures needs to be strengthened. In both cases, development of procedures along with

subsequently required training programs is a time and resource consuming task.

Additionally, a commenter from the Chemical Manufacturers Association (Ex. 2: 30, pp. 7, 8) said:

Refinery and chemical plant maintenance requires a multitude of procedures reflecting many different crafts and types of equipment.

Effective maintenance training will be based upon the maintenance procedures being developed above. Although some formal training programs have been developed, not all are completed. As a result, employers will have to evaluate where additional training is required, develop training programs, and then train employees with supporting documentation.

While employers generally have inspection and testing programs in place, most will require enhancements to comply with the provisions of the rule.

Other commenters (e.g., Ex. 2: 14, 41) strongly opposed any further extension of the effective date for the mechanical integrity provision.

These commenters stated that the rulemaking record demonstrates that many employers have already implemented management practices and procedures that meet the requirements of the standard, and while improvement of these practices and procedures will be an ongoing process, it does not justify delaying compliance with the specific components of the OSHA standard.

For example, a commenter from the United Steelworkers of America (USWA, Ex. 2: 41, pp. 8, 9) remarked:

Again, the industry is trying to give the impression that this subpart requires them to "start from scratch" and they have absolutely nothing in place at this time. This simply is not true. In virtually every facility, there are written procedures in place to maintain the on-going integrity of process equipment.

The industry further makes a point that many of their maintenance persons learned their craft "on the job." I don't believe this standard prohibits this type of training, providing that it covers the process and the job procedures (and) skills necessary to maintain the integrity of the equipment. The USWA does not believe OSHA wants the industry to re-invent the wheel; that a lot of what industry is doing now would be acceptable.

The requirements for inspecting and testing are generally being done in the industry by their own admission. All this provision requires is to follow recognized and generally accepted good engineering practices. Further, it requires that this information be documented and deficiencies in equipment that are outside acceptable limits be corrected.

A commenter from the Building and Construction Trades Department (Ex. 2: 14 p. 1–3), stated:

The rulemaking record demonstrates that many firms already have implemented more far-reaching management reforms than those required by OSHA's standard. Voluntary industry guidelines, such as the American Petroleum Institute's Recommended Practices 750 and 2220, have been in effect for some time, and are essentially congruent with OSHA's final standard.

Even under the terms and timetable of the final standard, an employer will not be required to fully comply with OSHA's process safety management standard for some time to come. This is a direct result of the fact that OSHA resolved to allow up to five years for employers to compile process safety information (section (d)) and to complete process hazard analyses (section (e)). As these sections are the critical building blocks of other components of the standard (such as the requirements for written operating procedures and training materials), these other components will necessarily be modified and augmented with later developed information and analysis. But recognizing that achievement of process safety will be an ongoing process does not justify delaying compliance with the specific components of OSHA's standard.

After analysis of the information contained in this rulemaking record, OSHA has concluded that employers have, or should have, implemented practices and procedures to maintain the on-going mechanical integrity of process equipment. Many of the mechanical integrity programs that employers have already implemented may comply with the standard.

For instance, most employers already have some type of program for testing and inspecting mechanical equipment, as well as programs that address quality assurance. Additionally, OSHA believes that most maintenance employees have already been trained in the hazards associated with the processes with which they will be working, and have the necessary training to perform their job tasks. OSHA did not expect employers to retrain all maintenance personnel. Rather, OSHA expects that as maintenance personnel take their skills from process to process, the employer will assure that these employees are aware of the necessary information pertaining to their work and the process.

Additionally, OSHA does not expect initial mechanical integrity programs to stay static. The Agency believes that process safety management is a dynamic process, and as a result of process hazard analyses and compliance audits, it may be determined that some mechanical integrity programs need to be updated or upgraded. However, the Agency believes that OSHA's recognition that process safety is an on-going process does not justify delaying compliance with this provision of the standard.

Management of Change, Paragraph (l)

The last paragraph of concern is paragraph (l), management of change. Petitioners indicate that the new ideas in the standard concerning management of change are difficult to place into practice since OSHA has defined change so broadly. CMA, API, and NPRA observed that while sites have always managed change, these long established systems will require change. They asserted that, based on experience with API's RP 750 and CMA's Process Safety Code, modifying present management of change systems is involved and takes time to accomplish. Petitioners suggested a schedule based on this experience illustrating a total elapsed time of 18 months.

Regarding the provision pertaining to management of change, many commenters (e.g., Ex. 2: 5, 9, 11, 20, 23, 30, 45, 49, 50, 51) stated that additional time is needed to implement management of change procedures because of the large number and diversity of changes that continually take place. These commenters remarked that implementing management of change procedures can be time-consuming for several reasons. These reasons include making a cultural change at facilities, the time necessary to obtain management and facility understanding and support, the time needed to define, list, and establish facility-specific management of change procedures and, the time needed to communicate/train affected personnel in the procedures.

Other commenters (Ex. 2: 14, 41) asserted that the effective date of this important provision should not be postponed any longer. These commenters stated that most employers have implemented management of change programs and, although they may not be "ideal," the considerations required by the management of change provision are currently being done by industry.

The United Steelworkers of America (Ex. 2: 41, p. 10) said:

The above listed considerations (requirements of the management of change provision, paragraph (l)), in the opinion of the USWA, are currently being done by the industry. This not only makes sense for safety, it also makes good business sense. Again, the industry is attempting to give the impression that all of their requirements must now be developed and that they have absolutely nothing in place.

A commenter from the Building and Construction Trades Department; AFL–CIO (Ex. 2: 14, p. 3) stated:

The standard does not mandate a specific, "ideal" management system, and there is no corresponding need for an employer to "get it exactly right" before establishing any safety management practices and procedures. Instead, employers have been given broad latitude to design and implement those systems and practices which are calculated to produce a safe workplace.

In order to create the structures through which employers, employees and third parties can act to improve safety practices in the industry, employers must begin immediately to comply with every component of the standard.

The management of change provision of the final rule requires employers to implement procedures to assure that certain considerations are addressed before any change is made to a process. These considerations include the technical basis for the proposed change, the impact of the change on the safety and health of employees, modifications to operating procedures, the time period for the change and, authorization for the change.

OSHA believes that it is extremely important to address these considerations because many of the incidents that the Agency has reviewed resulted from some type of change to the process. Additionally, OSHA believes that these considerations are neither complex nor difficult to implement and, in fact, the record indicates that many employers already have management of change procedures in place (e.g. Ex. 2: 8, 11, 15, 16, 26).

As discussed previously, OSHA realizes that currently implemented procedures, such as management of change procedures, will change over time. As an example, the Agency believes that continual improvement in these procedures will evolve as a result of process hazard analyzes and compliance audits.

The Agency has concluded that most employers have implemented management of change procedures to some extent. OSHA believes that many of these procedures may already meet the requirements of the standard, and if improvements in these management of change procedures are needed, the improvements will be accomplished by following all of the elements of the process management program.

Since OSHA believes that the implementation of management of change procedures is such an important factor in preventing catastrophic incidents, the Agency has also concluded that those employers who have not yet implemented management of change procedures must do so, immediately.

List of Subjects in 29 CFR Part 1910

Explosive, Flammable liquids and gases, Hazard analysis, Highly hazardous chemicals, Hazardous materials, Occupational safety and health, Safety, Process hazard analysis, Pyrotechnics.

Authority

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 304, Clean Air Act Amendments of 1990 (Publ. L. 101-549, Nov. 15, 1990, reprinted at 29 U.S.C. 655 Note (Supp. 1991)); Secretary of Labor's Order No. 1-90 (55 FR 9033); and 29 CFR part 1911.

Accordingly paragraph (f), paragraph (h), paragraph (j), and paragraph (l) of 29 CFR 1910.119 become effective August 27, 1992.

Signed at Washington, DC, this 21st day of August 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-20454 Filed 8-25-92; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92-103]

Special Local Regulations: New Jersey Offshore Power Boat Race, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the New Jersey Offshore Power Boat Race, a high speed offshore race which will take place in the Atlantic Ocean extending from Spring Lake, NJ to Seaside Heights, NJ. This regulation is necessary in order to control vessel traffic within the immediate vicinity of the event due to the hazards associated with power boat racing and the anticipated congestion at the time of the event. This regulation restricts access to the area of the race course and is needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This temporary regulation is effective from 11 am to 6 pm on September 19, 1992. In case of inclement weather, the effective date will be September 20, 1992, from 12 pm to 6 pm.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223-8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG E.G. Westerberg, Project Officer, First Coast Guard District Boating Safety Affairs Branch, and LCDR J.D. STIEB, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until August 12, 1992 and there was not sufficient time remaining to publish rules in advance of the event or to provide for a delayed effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards associated with this type of marine event. The sponsor had previously received a Coast Guard permit to hold the event in coastal waters off Atlantic City, NJ, but substantial construction in the Atlantic City staging area made that location impractical for logistical purposes. The sponsor has requested that the event be shifted northward, to take place in the same location as the annual Jenkinsons Offshore Classic. Extensive planning, publicity and operational commitments have already been made in connection with the race. The event is of such local popularity that delay or cancellation to provide for an NPRM would be against the public interest.

Background and Purpose

The New Jersey Offshore Power Boat Race is a high speed power boat race which will be held in the Atlantic Ocean adjacent to the shoreline between the Towns of Manasquan and Seaside Heights, NJ. This event will include up to 90 power boats competing on a rectangular course at speeds approaching 100 M.P.H. The regulated area will be the race course and

spectator areas, which will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor provided patrols, state and local law enforcement officials. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard patrol commander shall enter the regulated area. The potential hazards to participants, spectators, and transiting vessels are such that in the interest of safety of life on the navigable waters of the United States, the Coast Guard District Commander is issuing a special local regulation governing the conduct of the regatta. This regulation is required to protect the maritime public from possible hazards associated with high speed power boat racing.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The regulated area does not obstruct commercial shipping lanes or harbor entrances. The Coast Guard will attempt to minimize any delays for commercial vessels transiting the area. The economic impact of this regulation is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Due to the limited duration of the event, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and has concluded under section 2.B.2.c of Commandant Instruction M16475.1B that it will have no significant impact and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.T01–103 is added to read as follows:

§ 100.T01–103 New Jersey Offshore Power Boat Race, Manasquan, NJ

(a) Regulated area. The regulated area is the coastal Atlantic waters of New Jersey between the towns of Spring Lake and Seaside Heights. Specifically, the boundaries of the regulated area are:

(1) Northerly: An east to west line at latitude 40–10–00 North.

(2) Southerly: An east to west line at latitude 39–55–00 North.

(3) Easterly: A line drawn parallel to, and one and one-half (1½) miles seaward from the New Jersey coast between the north and south boundaries of the regulated area.

(4) Westerly: The New Jersey shoreline between the north and south boundaries of the regulated area.

(b) Special local regulations. (1) Commander, Coast Guard Group Sandy Hook reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and those vessels authorized by the sponsor. The Coast Guard patrol commander may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating vessels are exempted from this requirement as follows:

(i) *Transiting vessels.* Vessels exiting Manasquan Inlet may transit the regulated area in a northerly direction only: Navigation in any other direction is prohibited. Coast Guard patrol vessels will be present to direct transiting vessels to proceed north within one-quarter (¼) mile of the shore until clear of the regulated area in the vicinity of Spring Lake, NJ.

(ii) *Spectator vessels.* The spectator fleet will be held above (northeast of) the northern edge of the race course adjacent to Manasquan Inlet. The sponsor shall provide readily identifiable banners to mark the spectator area. Vessels will not be allowed to observe the race from any other location within the regulated area.

(3) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period of regulation.

(4) Race participants must remain on the course when racing. Any participating vessel straying from the race course must reduce speed and return to the course at headway speed. Only disabled race boats will be allowed to enter the spectator area. If a contestant enters the spectator area for any other reason, they will be automatically disqualified and the race may be terminated.

(5) All persons shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) In the event of an emergency or as directed by the Coast Guard patrol commander, the sponsor shall immediately cease racing activities. At the discretion of the patrol commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate the event.

(7) For any violations of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel, if the owner is actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(c) Effective dates. This regulation is effective between the hours of 11 am and 6 pm on September 19, 1992. In case of inclement weather, the regulation will

be effective between the hours of 12 pm and 6 pm on September 20, 1992.

Dated: August 17, 1992.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 92-20349 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CCGD13-92-01]

Drawbridge Operation Regulations; Snake River, ID

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the drawspan of the Interstate Highway Bridge (U.S. Route 12) across the Snake River, mile 140.0, between Lewiston, Idaho, and Clarkston, Washington. This change requires that advance notice be given by 5 p.m. on Wednesday for any openings on the following Friday, Saturday, or Sunday. For openings on holidays, notice must be given by 5 p.m. two workdays preceding the day of requested opening. The bridge would open as soon as possible for the passage of emergency vessels. This action is being taken because of the marked decrease in requests for bridge openings on weekends and holidays. This action will relieve the bridge owner of the burden of having persons constantly available to open the draw and will still provide for the reasonable needs of navigation.

DATES: This regulation becomes effective on September 25, 1992.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are Austin Pratt, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Discussion of Final Rule

On March 10, 1992, the Coast Guard published a proposed rule (53 FR 8428) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a public notice dated March 25, 1992. In each notice interested persons were given until April 23, 1992, to submit comments. No objections to the proposed rule were received. The Fire Chief for the city of Lewiston, Idaho, desired assurance that the local fireboat would be accommodated by the bridge operator as before. This assurance has been given and will not be affected by this final rule.

Regulatory Evaluation

This final rule is considered to be not major under Executive Order 12291 and non significant under the Department of Transportation regulatory policies and procedures (44 FR 113044, February 26, 1979). The economic impact has been determined to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any substantial effect on commercial navigation or any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) the U.S. Coast Guard must consider whether rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act. Because this final rule imposes no new requirements on small businesses and will result in partial relief from a regulatory burden on the owner or operator of this bridge, the Coast Guard does not expect this temporary to have significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed and determined by the Coast Guard to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.385 is revised to read as follows:

§ 117.385 Snake River.

The drawspan of the U.S. 12 bridge, mile 140.0, between Lewiston, Idaho, and Clarkston, Washington, operates as follows:

(a) The draw need not open for the passage of vessels except at these hours:

(1) From March 15 through November 15 at 6 a.m., 10 a.m., 3 p.m., 7 p.m., and 9 p.m.

(2) From November 16 through March 14 at 9 a.m., 10 a.m., 2 p.m., and 3 p.m.

(b) Requests for openings shall be given to the Washington State Department of Transportation.

(1) Monday through Thursday of every week, except holidays, the draw shall open if at least two hours notice is given.

(2) Friday through Sunday of every week, except holidays, the draw shall open if notice is given by 5 p.m. of the preceding Wednesday.

(3) The draw shall open on holidays if notice is given by 5 p.m. two workdays, excluding Friday, preceding the holiday.

(4) The draw shall open at any time for the passage of vessels engaged in an emergency.

Dated: August 10, 1992.

J. E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 92-20348 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-92-12]

Drawbridge Operation Regulations; Industrial Seaway Canal, Mississippi

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Harrison County Board of Supervisors, Gulfport, Mississippi, the Coast Guard is changing the regulation governing the operation of the double leaf bascule span drawbridge on Lorraine-Cowan Road, across the Industrial Seaway Canal, mile 11.3, near

Handsboro, Harrison County, Mississippi. The change will permit the draw to remain closed to navigation from 7 a.m. to 8 a.m., from 12 noon to 1 p.m., and from 5 p.m. to 6 p.m., on weekdays only, except holidays. The draw will open on demand at all other times. This action will provide relief for congested vehicular traffic during these periods and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on September 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On May 19, 1992, the Coast Guard published a proposed rule (57 FR 21225) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated June 9, 1992. In each notice interested parties were given until July 10, 1992, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

Two letters were received in response to Public Notice No. CGD8–07–92 issued on June 9, 1992. The National Marine Fisheries Service offered no objection to the proposed rule. The other respondent expressed concern relating to congested vessel traffic which might be affected by the proposed rule since the waterway is a main evacuation route in the event of storm warnings including threats of hurricanes. The Final Rule states that in such an event the bridge shall open on demand should a temporary surge in waterway traffic occur. There were no other comments received in response to the Public Notice.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the regulated periods should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.680 is added to read as follows:

§ 117.680 Industrial Seaway Canal.

The draw of the Lorraine-Cowan Road Bridge across the Industrial Seaway Canal, mile 11.3, shall open on signal; except that, the draw need not be opened from 7 a.m. to 8 a.m., from 12 noon to 1 p.m. and from 5 p.m. to 6 p.m., Monday through Friday, except holidays. The draw shall open on signal at any time for a vessel in distress, and the draw shall open on demand should a temporary surge in waterway traffic occur.

Dated: July 30, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92–20350 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 2, 3, 4, 6, 8, 13, 17, 18, 21, and 36

RIN 2900–AF95

Nomenclature Changes; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correction to Technical Amendments.

SUMMARY: This document contains corrections to the technical amendments/nomenclature changes which were published Monday, July 13, 1992, (57 FR 31006–31033). The changes made were to conform the statutory citations found throughout title 38 of the Code of Federal Regulations to the redesignation of sections of title 38, United States Code effected by Public Law No. 102–40, the "Department of Veterans Affairs Health-Care Personnel Act of 1991," and Public Law No. 102–83, the "Department of Veterans Affairs Codification Act."

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Frederic Conway, Deputy Assistant General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 523–3911.

SUPPLEMENTARY INFORMATION: As published, the technical amendments/nomenclature changes contain errors which may prove to be misleading and are in need of correction.

Approved: August 18, 1992.

B. Michael Berger,

Director Records Management Service.

Accordingly, the publication on July 13, 1992, of the technical amendment (FR Doc. 92–15752) is corrected as follows:

PART 1—GENERAL PROVISIONS

Page 31007, column 1, is corrected by adding to the list of changes: "55. Remove the citation "4132 records" and add in its place "7332 records", wherever it appears."

PART 2—DELEGATIONS OF AUTHORITY

1. Page 31007, column 2, change number 15 is corrected by removing the citation "38 U.S.C. 3301" and adding in its place the citation "38 U.S.C. 3301 and 3305".

2. Page 31007, column 2, change number 15 is corrected by removing the citation "38 U.S.C. 5701" and adding in

its place the citation "38 U.S.C. 5701 and 5705".

PART 3—ADJUDICATION

1. Page 31010, column 1, change number 163 is corrected by removing the citation "8 U.S.C." and adding in its place "38 U.S.C.".

2. Page 31012, column 3, is corrected by adding to the list of changes: "322. Remove the citation "38 U.S.C. 541(c)" and add in its place "38 U.S.C. 1541(c)", wherever it appears.

"323. Remove the citation 38 U.S.C. 521(b)(3) and (c)(3)" and add in its place "38 U.S.C. 1521(b)(3) and (c)(3)", wherever it appears."

"324. Remove the citation "38 U.S.C. 3010(f)" and add in its place "38 U.S.C. 5110(f)", wherever it appears."

PART 4—SCHEDULE FOR RATING DISABILITIES

Page 31012, column 3, change number 2 is corrected by removing the citation "38 U.S.C. 210c" and adding in its place "38 U.S.C. 210(c)".

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

1. Page 31013, column 1, change number 15 is corrected by removing the citation "8 U.S.C. 761" and adding in its place "38 U.S.C. 761".

2. Page 31013, column 1, is corrected by adding to the list of changes: "31. Remove the citation "Sec. 3202(a)" and adding in its place "Sec. 5502(a)", wherever it appears."

PART 8—NATIONAL SERVICE LIFE INSURANCE

1. Page 31013, column 2, change 10 is corrected by adding ", (c), (d), and (e)" after the citations "section 704(b)" and "section 1904(b)".

2. Page 31013, column 2, change number 18 is corrected by adding ", (d), or (3)" after the citation "38 U.S.C. 704(b)" and adding ", (d), or (e)" after the citation "38 U.S.C. 1904(b)".

3. Page 31013, column 2, change number 20 is corrected by adding ", (d), or (e)" after the citations "38 U.S.C. 704(c)" and "38 U.S.C. 1904(c)".

4. Page 31013, column 3, change number 36 is corrected by removing it in its entirety and adding in its place "Remove the citation "section 704 (c), (d), and (e)" and adding in its place "section 1904 (c), (d), and (e)" wherever it appears."

5. Page 31013, column 3, change number 39 is corrected by removing it in its entirety.

6. Page 31013, column 3, change 43 is corrected by removing the citation "38 U.S.C. 704 (b)" and adding in its place "38 U.S.C. 704 (b) and (e)".

7. Page 31013, column 3, change number 43 is corrected by removing the citation "38 U.S.C. 1904(b)" and adding in its place "38 U.S.C. 1904 (b) and (e)".

8. Page 31013, column 3, change number 45 is corrected by removing it in its entirety.

9. Page 31014, column 2, change number 70 is corrected by removing the citation "38 U.S.C." and adding in its place "sections".

10. Page 31014, column 2, is corrected by adding to the list of changes: "72. Remove the citation "38 U.S.C. 704 (b), (d), or (e)" and add in its place "38 U.S.C. 1904 (b), (d), or (e)", wherever it appears."

"73. Remove the citation "38 U.S.C. 704 (b) or (e)" and add in its place "38 U.S.C. 1904 (b) or (e)", wherever it appears."

"74. Remove the citation "section (b), (d), and (e)" and add in its place "section 1904 (b), (d), and (e)", wherever it appears."

"75. Remove the citation "section 725(b)" and adding in its place "section 1925(b)", wherever it appears."

"76. Remove the citation "section 704 (b), (c), (d), and (e)" and add in its place the citation "section 1904 (b), (c), (d), and (e)", wherever it appears."

"77. Remove the citation "38 U.S.C. 704 (b) and (e)" and add in its place "38 U.S.C. 1904 (b) and (e)", wherever it appears."

"78. Remove the citation "38 U.S.C. 724(b)" and add in its place "38 U.S.C. 1924(b)", wherever it appears."

"79. Remove the citation "38 U.S.C. 704 (d)" and add in its place "38 U.S.C. 1904 (d)" wherever it appears."

"80. Remove the citation "section 718" and add in its place "section 1918", wherever it appears."

11. Page 31014, column 2, is corrected by adding immediately before "PART 9—SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE" the following new section:

"PART 8a—VETERANS MORTGAGE LIFE INSURANCE

1. Remove the citation "38 U.S.C. 210, 806" and add in its place "38 U.S.C. 501, 2106", wherever it appears.

2. Remove the citation "38 U.S.C. 806" and add in its place, "38 U.S.C. 2106", wherever it appears.

3. Remove the citation "section 1823 or 1824" and add in its place "section 3723 or 3724", wherever it appears.

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

1. Page 31014, column 3, change number 5 is corrected by removing "3103" and adding in its place "3101".

2. Page 31014, column 3, change number 5 is corrected by removing "5303" and adding in its place "5301".

2. Page 31014, column 3 is corrected by adding to the list of changes: "14. Remove the citation "38 U.S.C. 210, 3202, 3203, 3311" and adding in its place "38 U.S.C. 501, 5502, 5503, 5711", wherever it appears."

PART 17—MEDICAL

1. Page 31017, column 3 is corrected by removing change number 154.

2. Page 31018, column 2 is corrected by adding to the list of changes: "191. Remove the citation "38 U.S.C. 5081–5083" and adding in its place "38 U.S.C. 8221–8223", wherever it appears."

"192. Remove the citation "39 U.S.C. 5034(2)" and add in its place "38 U.S.C. 8134(2)", wherever it appears."

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Page 31018, column 3 is corrected by adding to the list of changes: "30. Remove the citation "38 U.S.C. 610" and adding in its place "38 U.S.C. 1710", wherever it appears."

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. Page 31019, column 1, change number 11, remove the number "510" and add in its place the number "501".

2. Page 31020, column 1, change number 68 is corrected by removing the citation "38 U.S.C. 1508, 1780(g)" and adding in its place "38 U.S.C. 1508(d), 1780(g)".

3. Page 31021, column 3 is corrected by adding to the list of changes: "171. Remove the citation "38 U.S.C. 1503(b)(1)" and adding in its place "38 U.S.C. 3103(b)(1)", wherever it appears."

"172. Remove the citation "38 U.S.C. 1501(8)" and add in its place "38 U.S.C. 3108(8)", wherever it appears."

"173. Remove the citation "38 U.S.C. 1508(b)" and add in its place "38 U.S.C. 3108(b)", wherever it appears."

Subpart B—Veterans' Education Assistance Under 38 U.S.C. Chapter 34

Page 31021, column 3, change number 13 is corrected by removing the citation "38 U.S.C. 1602, 1652" and adding in its place "38 U.S.C. 1602(1), 1652".

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. Page 31022, column 2, change number 18 is corrected by removing the citation "38 U.S.C. 101(a)(4)" and adding in its place "38 U.S.C. 101(4)(A)", wherever it appears.

2. Page 31022, column 3 is corrected by adding to the list of changes: "45. Remove the citation "38 U.S.C. 1701(a)(3) and (d), 1712(a)" and add in its place "38 U.S.C. 3501(a)(3) and (d), 3512(a)", wherever it appears."

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. Page 31023, column 1, change number 20 is corrected by removing the word "for".

2. Page 31023, column 3, change number 56 is corrected by removing "(2)" and adding in its place "(3)", wherever it appears.

3. Page 31025, column 2, change number 158 is corrected by removing "1684(d)" and adding in its place "1682(d)".

4. Page 31025, column 3, change number 174 is corrected by removing "38 U.S.C. 1788(b)" and adding in it place "38 U.S.C. 1788(a)".

[FR Doc. 92-20358 Filed 8-25-92; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF15

Veterans Education; Verification of Pursuit and VEAP

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: These regulations require most students eligible for benefits under VEAP (Post-Vietnam Era Veterans' Educational Assistance Program) to submit a monthly verification of pursuit in order to receive educational assistance. The intent of these regulations is to prevent overpayments to these students. The regulations also contain a change to the effective date for reductions in educational assistance under VEAP.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 46140 through 46142 of the Federal Register of September 10, 1991, there was published a Notice of Intent to amend 38 CFR part 21 in order to require monthly verifications of pursuit from veterans pursuing a program of education under VEAP. Interested people were given 30 days to submit comments, suggestions or corrections. The Department of Veterans Affairs (VA) received two letters, one from an educational organization and one from a community college. Both letters contained objections.

At present, veterans pursuing a program of education under the Montgomery GI Bill–Active Duty have to submit a monthly verification of pursuit before receiving their monthly benefit payment. The letter writers examined this program in determining how they thought this same requirement would work in VEAP.

One letter writer pointed out that some overpayments in the Montgomery GI Bill–Active Duty are caused by VA error. Others are caused by veterans who do not verify their own pursuit correctly. The writer suggested that VA, in order to make monthly verifications of pursuit appear to be cost-effective for VEAP, was including the cost reductions caused by these errors.

VA and the Department of Defense wish to assure the public that this is not so. When VA did its study, it examined the complete records of many veterans. The department discovered that as of the time of the study 7.47% of the overpayments under the Montgomery GI Bill–Active Duty were due to VA error. Claimant error accounted for 10.27% of the overpayments. The study does not count the reductions in benefits made by these errors as part of the cost savings to be realized by implementing monthly verifications of pursuit for VEAP, because when VA discovers these errors it corrects them. Neither does the study suggest that monthly verifications of pursuit will eliminate all overpayments resulting from these or other causes. It does show that there will be substantial reductions in the amount of overpayments under VEAP.

The other letter suggested that monthly verification of pursuit not be implemented for VEAP, because it alleged that veterans receiving benefits under the Montgomery GI Bill–Active Duty either do not receive the form necessary to make the verification until mid-month or they do not receive the form at all. The writer stated that this causes a substantial delay in payment of benefits. The writer also stated that requiring the veteran to verify pursuit duplicated a report required from the school. Furthermore, the writer thought that requiring monthly verification of pursuit in VEAP would violate the Paperwork Reduction Act.

If, in fact, most veterans receiving benefits under the Montgomery GI Bill–Active duty either do not receive the form necessary to verify pursuit or receive it at mid-month, there would be a substantial delay in the payment of benefits. However, VA and Department of Defense do not believe that many veterans experience a substantial delay in payments from this cause.

VA monitors its programs to determine whether administrative procedures are causing delays in payments to eligible veterans. In 1989 the department studied whether the timing of monthly verification of pursuit forms was causing a delay in payment of Montgomery GI Bill–Active Duty payments. The study found that not only were two-thirds of the veterans receiving the necessary form within three or four days, but that 88% had returned the form and had it processed by VA within fourteen days. At that time the forms were sent to the veterans on the last day of the month. In order to assure that veterans would not only receive the form but would have it processed before mid-month, VA moved the date for release of the form to the fourth or fifth work day before the end of the month. The exact day depends upon the number of days in the month.

In order to eliminate delays when verification forms are lost VA permits veterans to telephone their verifications after the fifth day of a month. This is sufficient to release payments. However, the veterans are required to follow the telephone call with a written verification. VA will use this procedure for veterans receiving benefits under VEAP

Furthermore, VA is considering establishing a system which would permit veterans to verify their pursuit by using a telephone. This system, if adopted, would eliminate all delays, and would eliminate the need for written verifications.

VA and Department of Defense agree that a monthly verification of pursuit from the student duplicates the annual verification of pursuit which VA has required schools to submit. Consequently, on page 49737 of the **Federal Register** of October 1, 1991, VA proposed amending 38 CFR 21.4204(a) to eliminate the school's verification.

One of the purposes of the Paperwork Reduction Act of 1980 (chapter 35, title 44, U.S. Code) is to minimize the Federal paperwork burden for individuals. However, that law does not completely prevent the Federal Government from collecting information. The law requires Federal agencies to submit to the Office of Management and Budget requests for additional hours of information collection required by amended regulations. As indicated in the proposal of September 10, 1991, VA has done this. VA would not be violating the Paperwork Reduction Act by requiring monthly verifications of pursuit for veterans receiving benefits under VEAP.

VA and Department of Defense are making the amended regulations final. However, the authority citations printed in the proposal of September 10, 1991, reflected the way in which the sections of title 38, U.S. Code were numbered before the enactment of Public Law 102–83. Since Public Law 102–83 renumbered those cited sections, the authority citations reflect the numbering system introduced by that law. Furthermore, a word is added to the first sentence of § 21.5131 so that the sentence may make better sense.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Paperwork Reduction Act

The amendment to § 21.5133 requires an increased information collecting burden for individuals. Currently, individuals who are enrolled in courses not leading to a standard college degree and those pursuing apprenticeships and other on-job training certify their continued pursuit to VA monthly. Those enrolled in courses leading to a standard college degree do not. Requiring all to submit a monthly certification will result in a public report burden of 5 minutes per response and a total of an additional 30,878 burden hours during fiscal year 1992. Since VA projects a small but steady decline in those receiving educational assistance under VEAP in subsequent fiscal years, the number of annual hours will decline also during those years.

All individuals receiving benefits under the Montgomery GI Bill—Active Duty must submit this monthly certification. The information collection has been approved under OMB number 2900–0465. As required by section 3504(h) of the Paperwork Reduction Act VA submitted to OMB (the Office of Management and Budget) a request that it modify its current approval to include the amended regulations. This request has been approved.

The Catalog of Federal Domestic Assistance number for the program affected by these amended regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 27, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: July 1, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary, (Military Manpower & Personnel Policy), U.S. Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

§ 21.5130 [Amended]

2. In § 21.5130, paragraph (e) is removed and reserved.

3. Section 21.5131 and its authority citation are revised to read as follows:

§ 21.5131 Educational assistance allowance.

VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold a payment until it receives verification or certification of the individual's continued enrollment and adjusts the individual's account. See § 21.5133.

(Authority: 38 U.S.C. 3241; Pub. L. 94–592, Pub. L. 99–576, Pub. L. 101–237)

4. Section 21.5133 is added to read as follows:

§ 21.5133 Certifications and release of payments.

An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case, the provisions of this paragraph must be met.

(a) *General.* VA will pay educational assistance to a veteran or servicemember (other than one who qualifies for an advance payment, or one pursuing a program of apprenticeship, other on-job training, or a correspondence course) only after—

(1) The educational institution has certified his or her enrollment as provided in § 21.5200(d) of this part; and

(2) VA has received from the individual a verification of the enrollment. Generally, this verification will be required monthly, resulting in monthly payments.

(b) *Apprenticeship and other on-job training.* VA will pay educational assistance to a veteran pursuing a

program of apprenticeship or other on-job training only after—

(1) The training establishment has certified his or her enrollment in the training program as provided in § 21.5200(d); and

(2) VA has received from the veteran and the training establishment a certification of hours worked. Generally, this certification will be required monthly, resulting in monthly payments.

(c) *Correspondence training.* VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a combined correspondence-residence course only after—

(1) The educational institution has certified his or her enrollment;

(2) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(3) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution. Generally, this certification will be required quarterly, resulting in quarterly payments.

(Authority: 38 U.S.C. 3680(g))

(Approved by the Office of Management and Budget under control number 2900-0465)

5. In § 21.5200 paragraph (e) and its authority citation are revised to read as follows.

§ 21.5200 Schools.

* * * * *

(e) Section 21.4204 (except paragraphs (a) and (e))-Periodic certifications.

(Authority: 38 U.S.C. 3241, 3684)

* * * * *

[FR Doc. 92-20361 Filed 8-25-92; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE45

Veterans Education; The Veterans Education and Employment Amendments of 1989 and the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Veterans Education and Employment Amendments of 1989 contain several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). These include amendments to the work-study program; changes in the method for determining the end of a veteran's eligibility period; and a provision concerning duplication of benefits. These regulations will acquaint the public with the way in which the Department of Veterans Affairs (VA) is implementing these provisions of law.

EFFECTIVE DATES: The amendments to § 21.5145, like the provision of law they implement, are retroactively effective on May 1, 1990. The amendments to the remainder of the regulations, like the provisions of law they implement, are retroactively effective on December 18, 1989.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 23823 through 23825 of the **Federal Register** of May 24, 1991, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement those provisions of the Veterans Education and Employment Amendments of 1989 (title IV, Pub. L. 101-237) which affect VEAP. Interested people were given 30 days to submit comments, suggestions or objections. VA and the Department of Defense received no comments, suggestions or objections. Accordingly, they are making the amended regulations final.

As originally proposed, § 21.5041(a) contained a statement that VA in determining whether a veteran had been discharged due to a preexisting medical condition would be bound by a decision of a competent military authority. VA's administrative experience since the regulation was proposed has led the department to believe that such a restriction would conflict with VA's responsibility under 38 CFR 3.102 to resolve a reasonable doubt regarding a veteran's claim in favor of the veteran. Consequently, the final version of § 21.5041(a) does not contain this statement.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the amendments to § 21.5145, like the provision of law they implement, retroactively effective on May 1, 1990. The Department of Veterans Affairs and the Department of Defense also find that good cause exists for making the amendments to the remainder of the regulations, like the provisions of law they implement, retroactively effective on December 18, 1989.

It is necessary to implement these provisions of law as soon as possible for two reasons. For those provisions which are intended to achieve a benefit for the individual, the maximum benefits intended in the legislation will be achieved through prompt implementation. For those provisions which are restrictive, prompt implementation will properly achieve the intent of the law. Hence a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; might result in the denial of a benefit to someone who is entitled to it; or might result in the awarding of a benefit to someone who is not entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary, (Military Manpower & Personnel Policy), U.S. Department of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

§ 21.5021 [Amended]

2. In § 21.5021, paragraph (u)(2) and its authority citation are revised and paragraph (w) is added to read as follows:

§ 21.5021 Definitions.

* * * * *

(u) * * *

(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the individual's active military service and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 3241(a); Pub. L. 100–689, Pub. L. 101–237).

* * * * *

(w) *Continuous service* means—

(1) Active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.

(2) Time lost while on active duty will not interrupt the continuity of service. Time lost includes, but is not limited to, excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 3232(a); Pub. L. 101–237)

§ 21.5022 [Amended]

3. In § 21.5022, at the end of paragraph (a), remove the punctuation ".", and in its place, add the punctuation ":"; paragraphs (a)(1) thru (a)(6) are added and the authority citation for paragraph (a) is revised to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) * * *

(1) 38 U.S.C. chapter 31,

(2) 38 U.S.C. chapter 35,

(3) 10 U.S.C. chapter 107,

(4) Section 903 of the Department of Defense Authorization Act, 1981,

(5) The Hostage Relief Act of 1980, or

(6) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681(b); Pub. L. 98–223, Pub. L. 101–237)

* * * * *

§ 21.5040 [Amended]

4. In § 21.5040, paragraph (g) introductory text is revised and paragraph (h) is added to read as follows:

§ 21.5040 Basic eligibility.

* * * * *

(g) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 38 U.S.C. chapter 34.* Some individuals who have eligibility under 38 U.S.C. chapter 34 may elect instead to receive educational assistance allowance under 38 U.S.C. chapter 32.

* * * * *

(h) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 10 U.S.C. chapter 106.* An individual who serves in the Selected Reserves may not receive credit for that service under both 38 U.S.C. Chapter 32 and 10 U.S.C. Chapter 106. If he or she wishes to receive educational assistance based upon this service, the veteran must elect the chapter under which he or she will receive benefits.

(1) This election must be in writing and submitted to VA.

(2) If a veteran elects to receive educational assistance under 38 U.S.C. Chapter 32, and negotiates an educational assistance check which is based upon the period of service for which the election was made, the election is irrevocable. Negotiation of an educational assistance check provided under either 38 U.S.C. chapter 32 or 10 U.S.C. chapter 106, but based upon a period of service which preceded the period for which an election was made, will not serve to make the election irrevocable.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101–237)

§ 21.5041 [Amended]

5. In § 1.5041, paragraph (a) and its authority citation are revised to read as follows:

§ 21.5041 Periods of entitlement.

(a) *Ten-year delimiting period.* Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after the later of the following:

(1) His or her last discharge or release from a period of active duty of 90 days or more of continuous service; or

(2) His or her last discharge or release from a period of active duty of any length when the eligible individual is discharged or released—

(i) For a service-connected disability;

(ii) For a medical condition which preexisted such service and which VA determines is not service-connected;

(iii) For hardship; or

(iv) Involuntarily for convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3231; Pub. L. 94–502, Pub. L. 99–576, Pub. L. 101–237)

* * * * *

§ 21.5065 [Amended]

6. In § 21.5065 paragraph (c) is added to read as follows:

§ 21.5065 Refunds without disenrollment.

* * * * *

(c) *Refunds following an election under § 21.5040(b).* If a veteran described in § 21.5040(h) makes an election to have a period of service credited toward his or her eligibility and entitlement under 10 U.S.C. Chapter 106, he or she will be required to receive a refund of any contributions he or she made to the fund during that period of service.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101–237)

§ 21.5138 [Amended]

7. In § 21.5138 paragraph (b)(13) is revised and its authority citation is added to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

* * * * *

(b) * * *

(13) If the veteran is pursuing certain courses which do not lead to a standard college degree, has excessive absences, and incurred those absences before December 18, 1989, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result.	(16)...........

(Authority: 38 U.S.C. 3233 (1989), 38 U.S.C. 3680(a)(2) (1974); Pub. L. 101–237)

§ 21.5145 [Amended]

8. In § 21.5145 the section heading and paragraph (a), (d) and (f) and their authority citations are revised to read as follows:

§ 21.5145 Work-study program.

(a) *Eligibility.* Veterans pursuing programs of education or training under chapter 32 on a three-quarter-time or greater basis are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 3241, 3485; Pub. L. 99–576, Pub. L. 101–237)

* * * * *

(d) *Rate of payment.* In return for the veteran's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of—

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the veteran has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran has agreed to work.

(Authority: 38 U.S.C. 3241, 3485; Pub. L. 99–576, Pub. L. 101–237)

* * * * *

(f) *Veteran reduces rate of training.* In the event the veteran reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a three-quarter-time student.

(Authority: 38 U.S.C. 3241, 3681; Pub. L. 99–576, Pub. L. 101–237)

* * * * *

[FR Doc. 92–20362 Filed 8–25–92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL12–19–5555; (FRL–4195–8)]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of stay and reconsideration.

SUMMARY: This action announces a 3-month stay of certain Federal rules requiring reasonably available control technology (RACT) to control the emission of volatile organic compounds (VOCs) in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). The effectiveness of the emission limitations and standards for coating operations only as they apply to the metal furniture painting operations at the Allsteel Incorporated facility located in Kane County (55 FR at 26868–26874), is stayed for three months, pending reconsideration. USEPA is issuing this stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator with authority to stay the effectiveness of a rule during reconsideration.

EFFECTIVE DATES: Effective August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin seeking that USEPA, among other actions, revise the Illinois and Indiana ozone State implementation plans (SIPs) under section 110(c) and in conformance with section 172 (b) and (c) of the CAA. (*Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis. Sept. 22, 1989). As a result of a court-approved settlement agreement, signed by USEPA and the States of Illinois and Wisconsin on September 22, 1989, USEPA agreed to reduce emissions of VOCs, an ozone precursor, by promulgating Federal VOC RACT rules. Federal VOC RACT rules were required because a number of Illinois' VOC rules were deficient.

The settlement agreement set a tight deadline for the completion of the rulemaking, requiring USEPA to promulgate final VOC RACT rules by March 18, 1990. While that date was later extended to June 8, 1990, it left USEPA with little time to complete an especially demanding task.[1] On June 29, 1990, USEPA promulgated final federal rules (55 FR 26814) requiring RACT to control the emission of VOCs in six counties in the Chicago metropolitan area: Cook, DuPage, Kane, Lake, McHenry, and Will.

Subsequently, ten Petitioners filed petitions for review of USEPA's June 29, 1990, revisions to the Illinois SIP in the United States Court of Appeals for the Seventh Circuit. Allsteel was one of the initial Petitioners. On September 13, 1990, the Court, on its own motion, consolidated the ten petitions as *Illinois Environmental Regulatory Group ("IERG"), et. al.* v. *Reilly*, No. 90–2778. Since then, based on various motions, the Court has severed seven petitions and part of one other petition from the consolidated case.[2]

Allsteel has requested that USEPA promulgate a source-specific RACT limit for its metal furniture painting operations in lieu of the limits in the June 29, 1990 rules. To this end, Allsteel has asserted and has attempted to demonstrate that the RACT limit applicable under the federal rules is not RACT for its metal furniture coating operation and that the source-specific limits are RACT. Allsteel has submitted to the Agency information in support of a source-specific limit. In addition, Allsteel has formally requested the Agency to reconsider the FIP rules in light of the new information they have presented since the rules were finalized. As a result, USEPA has determined to convene a proceeding for reconsideration to address Allsteel's request pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B).

II. Rules To Be Stayed and Reconsidered

On May 6, 1992, Allsteel filed a petition for reconsideration with the

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[1] For example, the rulemaking established regulatory requirements governing the emissions of approximately 1000 sources. In addition, USEPA reviewed approximately four linear feet of public comments prior to promulgation of the final rule.

[2] On December 7, 1990, the Court severed the petitions of General Motors Corporation, Viskase Corporation and the portion of Allsteel's petition that concerned its adhesive lines; on March 1, 1991, the Court severed the petitions of Stepan and Duofast; on August 29, 1991, the Court severed the petitions of Riverside and Reynolds Metals Company; and on December 20, 1991, the Court severed the petition of Allsteel as to its metal furniture coating operation.

Agency in which it contends that the Federal rules are not RACT for its facility. In support of that contention, Allsteel has submitted new information to the Agency concerning its attempts to find compliant coatings. In accordance with section 307(d)(7)(B), USEPA believes that Allsteel has demonstrated that it was impracticable to submit the additional materials in support of this site-specific RACT during the comment period on the FIP rulemaking. Moreover, after initial review of the information submitted by Allsteel, USEPA has determined that the information is of central relevance to the outcome of the rule and raises questions about whether the existing limit is RACT for the Allsteel painting operations. Although USEPA has not completed review of this information, the Agency has determined that it provides a sufficient basis for reconsideration of the coating rule as it applies to Allsteel's metal furniture painting operation. Therefore, USEPA will grant Allsteel's request for reconsideration, and by today's action, USEPA is convening a proceeding for reconsideration of the coating rule as it applies to Allsteel's metal furniture painting operation.

III. Issuance of Stay

USEPA hereby issues a 3-month administrative stay of the effectiveness of the coating rule, 55 FR 26868–26874, codified at 40 CFR 52.741(e), which was promulgated as a final federal rule requiring RACT to control VOCs in the Illinois portion of the Chicago ozone nonattainment area, as this rule applies to the metal furniture painting operation at Allsteel. USEPA will reconsider this rule, as discussed above. If the reconsideration results in emission limitations and standards which are more stringent than the existing FIP rules, USEPA will propose an appropriate compliance period to follow the reconsideration. As a general matter, USEPA will provide an adequate period for compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure, as described above, that the affected parties are not unduly prejudiced by the Agency's reconsideration.

USEPA recognizes the interests of the State of Wisconsin in this matter. The regulatory requirements that will be stayed, pursuant to today's action, were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practicable.

IV. Authority for Stay and Reconsideration

The administrative stay and reconsideration of the rule announced by this notice is being undertaken pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for up to three months during the reconsideration of the final rulemaking action.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Dated August 11, 1992.

William K. Reilly,

Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart O is being amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Subpart O—Illinois

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.741 is amended by adding paragraph (z)(5) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(z) * * *

(5) The following rule is stayed from August 11, 1992 to November 12, 1992: 40 CFR 52.741(e) only as it applies to the metal furniture coating operations at the Allsteel Incorporated facility located in Kane County.

[FR Doc. 92–20448 Filed 8–25–92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[ORD-065-IFC]

Medicare Program; Beneficiary Counseling and Assistance Grants Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule establishes a minimum level of funding for grants made to States, for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under the Medicare program. This rule implements, in part, section 4360(a) of the Omnibus Budget Reconciliation Act of 1990.

DATES: *Effective Date*: This interim final rule with comment period is effective on September 25, 1992.

Comment Period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 26, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: ORD–065–IFC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code ORD–065–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Don Sherwood, (410) 966-6652.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4360 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), (42 U.S.C. 1395b-4), authorizes us to make grants to States for health insurance advisory service programs for Medicare beneficiaries. Grant funds are available to support information, counseling, and assistance (ICA) relating to Medicare, Medicaid, Medicare supplemental policies, long term care insurance, and other health insurance benefit information. To be eligible, States must have a Federally approved Medicare supplement regulatory program under section 1882 of the Social Security Act.

The Health Insurance ICA Grants Program is designed to develop and strengthen the capability of States to provide Medicare beneficiaries information, counseling, and assistance on adequate and appropriate health insurance coverage. Grant funding is available to States for projects to plan, implement, operate, and/or enhance a variety of ICA activities. States may request grant funds for 2 years to develop new ICA programs or to enhance existing ICA programs that meet the requirements specified in section 4360 of OBRA 90.

Section 4360(a) requires us to publish regulations to establish a minimum level of funding for a health insurance ICA grant. Section 4360(f) authorizes the appropriation of $10,000,000 each for fiscal years 1991 through 1993, in equal parts, from the Medicare Hospital Insurance Trust Fund and from the Medicare Supplementary Medical Insurance Trust Fund. Although section 4360(f) authorizes the appropriation of funds for fiscal years 1991 through 1993, funds in the amount of $10 million were first appropriated for fiscal year 1992. Information counseling and assistance grants are expected to be awarded from this appropriation in September 1992. No funds were requested in the President's fiscal year 1993 budget.

Section 4360(c) of OBRA 1990, recognizes that a number of States already have relatively extensive health insurance ICA programs in operation that are "substantially similar" to the scope of activities envisioned in this grant program. These States are encouraged to apply for grants funding under this program to enhance or expand their current efforts. An existing State health insurance counseling program would be deemed to meet the "substantially similar" criteria for a health ICA program described in section 4360(b)(2) of OBRA 90, if it meets certain requirements.

In accordance with the requirements of section 4360 of OBRA 90, we announced the availability of funding for health insurance ICA grants. On April 15, 1992, we mailed the solicitation and grant application package to the Governors or their designees of all the eligible States, Commonwealths, and Territories. The closing date for receipt of applications was July 10, 1992. Awards for health insurance ICA grants will be made before October 1, 1992.

II. Provisions of this Interim Final Rule

A. Availability and Duration of Funds for Grants

Congress has appropriated $10,000,000 for carrying out the grant program in fiscal year 1992. Grants will be approved for only the first year of the grant. Funds for the second year will be subject to satisfactory progress in each State's project and Congressional appropriations of funds for fiscal year 1993. The criteria by which progress will be evaluated, and the performance standards for determining whether satisfactory progress has been made, will be specified in the notice of grant award sent to each State.

B. Number and Size of Grants

1. Basic Grants.

Two types of basic grants will be made under this program: New program grants, and, in States with "substantially similar" ICA programs, existing program enhancement grants.

We are interested in establishing or enhancing ICA programs in all eligible States, Commonwealths, and Territories. Therefore, all eligible States, Commonwealths, and Territories that submit acceptable applications will receive a basic grant including a variable amount. The basic grant awards consist of two parts; a fixed amount and a variable amount. The minimum basic grant available to each State, Puerto Rico, and the District of Columbia will equal $75,000 plus an average of 10.75 cents per Medicare beneficiary residing in the State. Because of their limited populations, the minimum basic grant available to the territories of American Samoa, Guam, and the Virgin Islands will equal $25,000 plus an average of 10.75 cents per Medicare beneficiary residing in the territory.

Nationwide, the variable per capita amount is an average of 10.75 cents for each Medicare beneficiary. We based the variable portion of the minimum basic grant on a formula representing the percentage of nationwide Medicare beneficiaries residing in the State, the State's proportion of Medicare beneficiaries to its total population, and the percentage of the State's Medicare beneficiary population that resides in rural areas. States with a higher proportion of Medicare beneficiaries to their total State population and/or a higher proportion of rural Medicare beneficiaries will receive more variable funds per beneficiary under this grant program. Of the total variable portion of the award, 74 percent is based on the number of Medicare beneficiaries in the State, 11 percent is based on the proportion of Medicare beneficiaries to the total State population, and 15 percent is based on the percentage of the State's Medicare beneficiary population that resides in rural areas. We based population estimates on the U.S. Census estimates for 1990. The Medicare beneficiaries estimates came from the HCFA enrollment data base as of July, 1990. We consider "rural areas" to be counties located outside of metropolitan statistical areas.

This minimum basic grant amount is based on an assumption that all States and jurisdictions eligible for the program will apply and receive grants. If some States do not apply or do not satisfy the requirements for a grant in this solicitation, the remaining funds may be allocated among all States receiving minimum basic grants based on the variable portion of the basic grant formula. States that wish to receive an allocation of remaining funds will be required to submit revised budgets and project plans to receive additional funding under this grant program.

2. Supplemental Coordinated Care Grants

In order to encourage States with existing coordinated care programs to be more active in this area, supplemental grant awards will be available for intensive innovative approaches to making information, counseling and/or assistance with coordinated care benefits available to Medicare beneficiaries. All States eligible to apply for supplemental grant funding that submit acceptable proposals will receive awards. A State must receive a basic grant to qualify for consideration of supplemental coordinated care grant funding.

A pool of $1,000,000 has been set aside to fund the efforts of States in this

area. The amount awarded to States that have Medicare Coordinated Care plans will be based on: the budget submitted by the State; the number of States qualifying for funds under this supplemental grant program; the number of coordinated care plans in those States and/or being designated as a Medicare SELECT State; and the potential for implementation of the proposed approach. Any part of this pool not granted under the supplemental coordinated care program will be transferred to the basic grant funds and allocated among all States receiving basic grants based on the variable portion of the basic grant award formula. If the amount of the grant under the supplemental coordinated care program differs from the States' original budget request, States will be required to submit revised budgets and project plans to reflect the amount of the funding under this supplemental program.

C. Limitations

A State that receives a grant under this program may use the grant for any expenses incurred in planning, developing implementing and/or operating the program for which the grant is made, except that a State that receives a grant to supplement an existing (that is, "substantially similar") program must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the award of this grant and funding through other sources (including in-kind contributions), but must maintain the activities of the program at least at the level that those activities were conducted immediately preceding that date. States will be required to provide the information to document their maintenance of effort and funding levels. Grants will be awarded through September 30, 1992, for all State applications approved by that date. A State that receives a grant under this program may, not later than 180 days after receiving the grant, and annually thereafter, submit a report to HCFA that includes information on: The number of individuals served by the program; an estimate of the amount of funds saved by the State and eligible individuals in the State, as a result of the program; and the problem that eligible individuals in the State encounter in procuring adequate and appropriate health care.

III. Collection of Information Requirements

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on documents published for comment, we are not able to acknowledge or respond to them individually. Nevertheless, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Prior Notice and Comment Period

We ordinarily publish a general notice of proposed rulemaking in the **Federal Register** and invite prior public comment on the proposed rule. This rule includes a reference to the legal authority under which it is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued. In the case of this rule, funds appropriated for the grants will lapse and not be available if we allow for a prior notice and comment period. Therefore, we find that it would be against the public interest to delay publication of this rule pending completion of a prior public comment period, since that would prevent the distribution of grants for FY 1992.

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States are not considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This rule simply establishes the terms and conditions of funding for grants. It has no independent or consequential effect on the economy. The activities conducted under the grant may improve competition by informing consumers of health insurance alternatives. Therefore, this is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this interim final rule with comment period will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR part 403 is amended as set forth below:

PART 403—SPECIAL PROGRAMS AND PROJECTS

A new subpart E is added to read as follows:

Subpart E—Beneficiary Counseling and Assistance Grants

Sec.

403.500 Basis, scope, and definition.
403.502 Availability and duration of funds for basic grants.
403.504 Number and size of basic grants.
403.506 Supplemental coordinated care grants.
403.508 Limitations.

Authority: Sec. 1882 of the Social Security Act (42 U.S.C. 1395k) and section 4360(a) of Public Law 100-508 (42 U.S.C. 1395b-4).

Subpart E—Beneficiary Counseling and Assistance Grants

§ 403.500 Basis, scope, and definition.

(a) *Basis.* This subpart implements, in part, the provisions of section 4360(a) of Public Law 100–508 by establishing a minimum level of funding for grants made to States for fiscal years 1992 and 1993, for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under the Medicare program.

(b) *Scope of subpart.* This subpart sets forth the minimum levels of funding for those States qualifying for the grants. There are separate minimum funding levels for basic grants and for supplemental coordinated care grants.

(c) *Definition.* For purposes of this subpart, the term "State" includes (except where otherwise indicated by the context) the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

§ 403.502 Availability and duration of funds for basic grants.

(a) *Availability of funds.* For fiscal year 1992, $10,000,000 was appropriated for purposes of carrying out the grants program. Of this amount, we have initially allocated $1,000,000 to funding supplemental coordinated care grants (see § 403.506(b)).

(b) *Duration of grants.* (1) HCFA awards grants to States for a 12-month period ending September 30, 1993, or later. Funds awarded will not be available for expenditures after January 1, 1994.

(2) Initially, HCFA allocates funds to States for the first year only.

(3) HCFA awards funds for 1993 subject to the satisfactory progress in each State's project and Congressional appropriations of funds for fiscal year 1993. The criteria by which progress will be evaluated, and the performance standards for determining whether satisfactory progress has been made, will be specified in the notice of grant award sent to each State.

§ 403.504 Number and size of basic grants.

(a) *General.* HCFA awards the following types of basic grants:

(1) New program grants.

(2) Existing program enhancement grants.

(b) *Minimum funding level.* Each eligible State that submits an acceptable application receives a basic grant including a variable amount. The minimum funding level for a basic grant consists of a——

(1) Basic portion, which is for——

(i) Each of the 50 States, $75,000;

(ii) District of Columbia, $75,000;

(iii) Puerto Rico, $75,000;

(iv) American Samoa, $25,000;

(v) Guam, $25,000;

(vi) Virgin Islands $25,000; and

(2) Variable portion, which consists of a variable per capita amount based on the number of Medicare beneficiaries residing in the State. The national average per capita amount is 10.75 cents. The per capita amount a particular State receives is based on the formula specified in paragraph (c) of this section.

(c) *Calculation of variable portion of grant.* (1) HCFA bases the variable portion of the basic grant on the following:

(i) The percentage of nationwide Medicare beneficiaries residing in the State.

(ii) The percentage of the State's total population who are Medicare beneficiaries.

(iii) The percentage of the State's Medicare beneficiary population that resides in rural areas.

(2) States with a higher proportion of Medicare beneficiaries to their total State population and/or a higher proportion of rural Medicare beneficiaries receive more variable funds per beneficiary.

(3) Of the total variable portion of the award, 74 percent is based on the number of Medicare beneficiaries in the State, 11 percent is based on the proportion of Medicare beneficiaries to the total State population, and 15 percent is based on the percentage of the State's Medicare beneficiary population that resides in rural areas.

(d) *Allocation of remaining funds.* (1) HCFA may transfer funds not awarded under this section to the basic grant funds described in § 403.502, and may allocate these funds to States that have been awarded basic grant funds under this section, using the calculation described in § 403.504(c) for the variable portion of basic grants.

(2) If the amount of a grant under this section differs from a State's original budget request, the State must submit a revised budget and project plan to reflect the amount of the funding under this section.

§ 403.506 Supplemental coordinated care grants.

(a) *General.* HCFA awards supplemental grants to States for intensive, innovative approaches to making information, counseling and/or assistance with coordinated care benefits available to Medicare beneficiaries. A State must receive a basic grant to qualify for a supplemental coordinated care grant. Each State eligible to apply for a supplemental grant that submits an acceptable proposal receives a grant.

(b) *Funding.* HCFA awards supplemental grants from a pool of $1,000,000. HCFA bases the amount awarded to States that have Medicare Coordinated Care plans on the following:

(1) The budget submitted by the State.

(2) The number of States qualifying for funds under this section.

(3) The number of coordinated care plans in those States qualifying for funds under this section.

(c) *Allocation of remaining funds.* (1) HCFA may transfer funds not awarded under this section to the basic grant funds described in § 403.502, and may allocate the funds to States that have been awarded basic grant funds under this section, using the calculation described in § 403.504(c) for the variable portion of basic grants.

(2) If the amount of a grant under this section differs from a State's original budget request, the State must submit a revised budget and project plan to reflect the amount of the funding under this section.

§ 403.508 Limitations.

(a) *Use of grants.* A State that receives a grant under this subpart may use the grant for any reasonable expenses incurred in planning, developing, implementing, and/or operating the program for which the grant is made.

(b) *Maintenance of effort.* A State that receives a grant to supplement an existing program (see § 403.504(a)(2) of this subpart) must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the award of the grant and funded through other sources (including in-kind contributions), but must maintain the activities of the program at least at the level that those activities were conducted immediately preceding that date.

(c) *Awarding of grants.* Grants will be awarded by September 30, 1992 for all State applications approved by that date.

(d) *Annual report.* A State that receives a grant under this subpart E must, not later than 180 days after receiving the grant, and annually thereafter, submit a report to HCFA that includes information on:

(1) The number of individuals served by the program.

(2) An estimate of the amount of funds saved by the State and eligible individuals in the State, as a result of the program.

(3) The problem that eligible individuals in the State encounter in procuring adequate and appropriate health care.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 29, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: August 10, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-20447 Filed 8-25-92; 8:45 am]

BILLING CODE 4120-01-M

Proposed Rules

Federal Register

Vol. 57, No. 166

Wednesday, August 26, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV-92-029]

Proposed Rule To Establish Pit and Pit Fragment Tolerances for Dried Prunes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of pit and pit fragment tolerances for pitted and macerated dried prunes. Currently there is no required tolerance for pit or pit fragments under the marketing order. The Dried Fruit Association (DFA), the inspection agency established under the marketing order, inspects for pits and pit fragments only on handler request based on a 2 percent tolerance established by the Food and Drug Administration (FDA). The proposal would establish that no handler shall ship any lot of pitted prunes for human consumption as pitted prunes unless the pitted prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments, and any lot of pitted macerated prunes for human consumption as pitted macerated prunes unless the macerated prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments. The proposed tolerances should benefit prune producers, handlers, and consumers, and foster continued growth of the market for pitted and macerated prunes.

DATES: Comments which are received by September 10, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone (202) 205-2830.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 993 [7 CFR 993], both as amended, hereinafter referred to as the "order", regulating the handling of dried prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of prunes who are subject to regulation under the marketing order and approximately 1,400 producers in the regulated area. Small agricultural procedures have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This action would revise paragraph (f)(1) of section 993.150 of Subpart-Administrative Rules and Regulations (7 CFR 993.101-993.174) and is based on a unanimous recommendation of the Prune Marketing Committee (Committee) and other available information.

Paragraphs (a) and (b) of section 993.50 provide authority for the establishment of more restrictive regulations with respect to prunes that may be shipped or otherwise disposed of by a handler if such action tends to effectuate the declared policy of the Act. Section 993.150(f)(1) specifies minimum requirements for pitted prunes for human consumption as pitted prunes and for pitted prunes for use and used in prune products for human consumption.

Pitted dried prunes (with their shape maintained) are preferred for snacking by consumers due to their attractive appearance, but are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out). Pitted macerated prunes are characterized by a flattened appearance with slightly

more skin break where the pit has been removed because the pitting machine used employs rollers to squeeze the pits out. Such prunes are preferred as an ingredient for cooking and baking, where appearance and identity are not important, but can also be used for snacking. Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut/diced into small pieces or by being block pressed into cakes of pitted flesh. Cut/diced prunes generally are used as ingredients for cooking and baking, and block pressed prunes are used in prune products, such as prune better, prune paste, and puree.

According to the Committee, pitted prunes offer consumers a high quality product and provide the industry with its best opportunity for future growth. California pitted dried prune shipments have increased by 10 percent annually over the last 10 years (91,512 tons in 1990–91 versus 34,314 tons in 1980–81), and currently represent nearly 49 percent of total dried prune shipments. Ten years ago pitted prune shipments represented less than 23 percent of total dried prune shipments.

Currently, the presence of pits and pit fragments in pitted and macerated prunes is not scored as defect when inspecting such prunes under the marketing order. The DFA, the inspection agency under the marketing order for prunes, currently inspects pitted prunes and macerated prunes for pits and pit fragments only on request of the handler. The tolerance imposed is the tolerance implemented by the U.S. Food and Drug Administration as a food defect action level. Pursuant to the FDA requirements, pitted prunes cannot contain more than an average of 2 percent by count with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted prunes cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

The most common consumer complaints received by California prune handlers concern pitted prunes and macerated prunes containing pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry has information indicating that this figure significantly underestimates the magnitude of the problem. Many consumers finding pits and pit fragments simply discontinue purchasing a brand or all prune brands. Thus, the industry recommended the establishment of a tolerance for pits and pit fragments after pitting, differentiating between pitted prunes, macerated prunes, and well macerated prunes.

Because this appears to be the most likely reason to hinder the continued growth of this important market for dried prunes, the Committee recommended this proposal pursuant to the authority in paragraphs (a) and (b) of § 993.50. Experience has shown that the machines used to pit prunes for use as pitted prunes occasionally leave prunes with whole pits or large pit fragments, and that the machine used for macerated prunes occasionally leaves prunes with shattered pits.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments. Consequently, the Committee recommended that no handler shall ship any lot of pitted prunes unless the prunes contain no more than an average of 0.5 percent by count by prunes with whole pits and/or pit fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes cannot have more than 0.5 percent by count with whole pits and/or pit fragments 2 mm or longer.

For pitted macerated prunes, the Committee recommended that such prunes contain no more than an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted macerated prunes cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. The Committee recommended a more lenient tolerance for macerated prunes because such prunes are used mostly as ingredients in cooking and baking and any pit or pit fragments are more easily noticed by the consumer. The latter tolerance is the same as that implemented by the Food and Drug Administration.

No tolerance was recommended for well macerated prunes because these prunes are only used in prune products and there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, any pit fragments are generally so small that they cause no problems.

In order to obtain more information regarding pits and pit fragments, the DFA conducted a study between December, 1991, and January, 1992. The study revealed that 91 percent and 88 percent of the pitted prunes inspected met the 0.5 percent by count tolerance and that 99 percent of macerated prunes inspected met the 2 percent by count tolerance. On the basis of the information, the Committee believes that handlers may experience a slight increase in pitter maintenance and hand sorting costs in order to consistently meet the new tolerances, but that these costs should not disproportionately impact small entities.

The estimated increment inspection cost for these tests is $2.50 per ton. This cost was based on 1 sample taken from each 1,000 pounds of prunes in the lot. DFA indicated that the cost could be reduced to $1.25 per ton, if a 1 sample taken from each 2,000 pounds were adopted, without harming the validity of the inspection results.

The recommended tolerances would ensure a consistently higher quality product for consumers which would benefit all producers and handlers through increased prune sales, higher handler profits, and improved grower returns. The tolerances will be equitable because all handlers who market pitted prunes have similar equipment and are capable of meeting the proposed tolerances with proper equipment maintenance and hand sorting of pitted and macerated prunes. The tolerances will apply uniformly to all California pitted prune handlers.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for dried prunes under a domestic marketing order, imported dried prunes must meet the same or comparable requirements. Hence, pit and pit fragment tolerances must be established for imported pitted dried prunes and pitted macerated prunes in § 999.200. The import regulation change requires the concurrence of the United States Trade Representative (USTR). A proposal to change the import regulation will be issued as a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 15 days is appropriate because: (1) This action, if adopted, should be implemented as soon as possible; August 1, 1992, the beginning of the season; and (2) this action was discussed at a public meeting.

All written comments received will be reviewed in making a final decision on the establishment of the proposed tolerances.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 993 be amended to read as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In section 993.150, paragraph (f)(1) is redesignated as paragraph (f)(1)(i) and new paragraphs (f)(1)(ii) and (f)(1)(iii) are added to read as follows:

§ 993.150 Disposition of prunes by handlers.

* * * * *

(f) * * *

(1) *For human consumption as such.*

(i) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless the lot, before pitting, met (A) The applicable minimum standard set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes, and (B) The requirements specified in § 993.50(c) and (d).

(ii) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(ii), pitted prunes means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(iii) No handler shall ship or otherwise make final disposition of any lot of macerated prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(iii), macerated prunes means prunes with the pit removed that are characterized by a flattened appearance with slightly more skin breaks where the pit has been removed than with pitted prunes.

* * * * *

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20383 Filed 8–25–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–269–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, that would have required placing a life limit on certain brake torque plates. That proposal was prompted by reports of fatigue cracks developing in brake unit torque plates. This action revises the proposed rule by changing the method required to place these life limits on the brake torque plates. The actions specified by this proposed AD are intended to prevent structural failure of the brake torque plates.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–269–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 23, 1992 (57 FR 2692). That NPRM would have required placing a life limit on certain brake unit torque plates. That NPRM was prompted by reports of fatigue cracks developing in brake unit torque plates. That condition, if not corrected, could result in structural failure of the brake torque plates.

Since the issuance of that NPRM, the FAA has received information that has prompted a reconsideration of the

proposed requirements. One commenter to the proposal asserts that the proposed AD is unnecessary, since mandatory life limits for brake torque plates are included in the Limitations Section of the FAA-approved Instructions for Continued Airworthiness (IFCA) for this airplane. The commenter contends that the issuance of an AD requiring life limits that are the same as those included in the ICFA would be redundant and would pose an added administrative burden on the operators.

The FAA concurs. The FAA has determined that compliance with the Limitations Section of the IFCA that is in effect when a new airplane is delivered from the factory is mandatory; however, compliance with later revisions of that document is not mandatory for U.S. operators unless the revision is added to the document by rulemaking procedures (including notice and opportunity for public comment).

Consequently, the FAA has revised the NPRM to change the method required to place life limits on the brake torque plates. The new method would add the Dunlop brake torque plate life limitations referenced in British Aerospace Service Bulletin ATP–32–36 to the FAA-approved Mandatory Life Limitations (Airframe) Section of the British Aerospace ATP Aircraft Maintenance Manual. As a result, operators would record compliance with this AD only once, and would continue to update maintenance records repetitively to show compliance with the Limitations Section of the ATP Aircraft Maintenance Manual.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Paragraph (c) of the NPRM [redesignated as paragraph (b) of this supplemental notice] has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per airplane to add the brake torque plate life limitations to the Maintenance Manual, and approximately 20 work hours per airplane to accomplish the initial parts change. The average labor rate is $55 per work hour. (If the proposed actions are implemented during normal maintenance, no additional work hours will be necessary.) Dunlop will provide new torque plates at normal brake overhaul at no cost to the airplane operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $275 (for the Maintenance Manual addition) and $11,000 (for the initial parts change). This total cost figure of $11,275 assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–269–AD.

Applicability: All Model ATP series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of certain brake torque plates and accompanying brake failure, accomplish the following:

(a) Within 400 landings after the effective date of this AD, revise the FAA-approved Mandatory Life Limitations (Airframe) Section, Chapter 5, Section 05–10–11, Table 1, page 4, of the British Aerospace ATP Aircraft Maintenance Manual, by deleting the existing life limitations for brake torque plates, part numbers AHA 1777 and AHA 1650, and adding the component life limitations listed in Table 1 below. The Maintenance Manual revision may be accomplished by inserting a copy of this AD into the Mandatory Life Limitations (Airframe) Section of the ATP Aircraft Maintenance Manual. Once this revised page of the Maintenance Manual is available from British Aerospace and is inserted into the Maintenance Manual, the copy of this AD may be removed.

TABLE 1

MSI/SSI Item	Description	Part number	Life limitation
32–42–00–022...	Brake torque plate (Post Dunlop Mod 2541).	AHM8857 Assembly AHA 1777.	14,500 landings.
32–42–00–022...	Brake torque plate (Pre Dunlop Mod 2541).	AHM8857 Assembly AHA 1650.	10,000 landings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20398 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-NM-141-AD]

Airworthiness Directives; CASA Model CN-235, CN-235-100, and CN-235-200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model CN-235, CN-235-100, and CN-235-200 series airplanes. This proposal would require repetitive inspections of the flap track support structure to detect cracks and corrosion, and replacement of cracked or corroded parts. This proposal is prompted by reports of cracks due to corrosion found in the support lugs of the flap tracks. The actions specified by the proposed AD are intended to prevent flap separation and loss of roll control due to unsymmetrical wing surfaces.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-141-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on all CASA Model CN-235, CN-235-100, and CN-235-200 series airplanes. The DGAC advises that there have been reports of cracks due to corrosion found in the support lugs of the flap tracks on Model CN-235 series airplanes. Cracks in these areas, if not detected and corrected in a timely manner, could result in flap separation and loss of roll control due to unsymmetrical wing surfaces.

CASA has issued Maintenance Instructions 235-58, dated November 21, 1991, which describes procedures for repetitive detailed visual inspections of the flap track support structure to detect cracks and corrosion. The DGAC classified these maintenance instructions as mandatory and issued Spanish Airworthiness Directive Number 01/92 in order to assure the continued airworthiness of these airplanes in Spain.

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections of the flap track support structure to detect cracks and corrosion in accordance with the maintenance instructions described previously. In addition, replacement of any cracked or corroded parts found would be required to be performed in accordance with a manner approved by the FAA.

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,100. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CASA: Docket 92-NM-141-AD.

Applicability: All model CN-234, CN-235-100, and CN-235-200 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent flap separation and loss of roll control due to unsymmetrical wing surfaces, accomplish the following:

(a) Perform detailed visual inspections of the flap track support structure to detect cracks and corrosion in accordance with CASA Maintenance Instructions 235-58, dated November 21, 1991, at the intervals specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated 2,000 hours time-in-service or less as of the effective date of this AD: Within 12 months after the effective date of this AD, or at the next "C" check whichever occurs first, and thereafter at intervals not to exceed 12 months.

(2) For airplanes that have accumulated more than 2,000 hours time-in-service as of the effective date of this AD: Within 100 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 12 months.

(b) If cracks or corrosion are found as a result of the inspections required by paragraph (a) of this AD, prior to further flight, replace cracked or corroded parts in accordance with a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20399 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-144-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8 series airplanes equipped with microwave landing system (MLS) provisions. This proposal would require a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the MLS with the ground proximity warning system (GPWS), and, if necessary, correction of the wiring and performance of a functional test. This proposal is prompted by reports that wiring in some airplanes has not been corrected to provide GPWS Mode 5 "Below Glideslope" warning when operating with the MLS. The actions specified by the proposed AD are intended to prevent the airplane from landing short of the runway.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-144-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-144-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-144-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-8 series airplanes equipped with microwave landing system (MLS) provisions. Transport Canada Aviation advises that reports have been received that on some of the affected airplanes, electrical wiring for the vertical deviation signal

may not have been properly installed and/or connected to tie the MLS with the GPWS. As a result, when operating in the MLS mode, if the airplane is inadvertently flown below the proper glideslope, the appropriate GPWS Mode 5 "Below Glideslope" warning will not be given to the flight crew. This condition, if not corrected, could result in the airplane landing short of the runway.

De Havilland, Inc., has issued Service Bulletin 8–34–60, Revision C, dated November 1, 1991, which describes procedures for a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the MLS with the GPWS, and, if necessary, correction of the wiring and performance of a functional test. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–89–18R1, dated May 11, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the MLS with the GPWS, and, if necessary, correction of the wiring and performance of a functional test. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimate that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,320. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–144–AD.

Applicability: Model DHC–8 series airplanes equipped with microwave landing system (MLS) provisions, as listed in de Havilland Service Bulletin 8–34–60, Revision C, dated November 1, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from landing short of the runway, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the microwave landing system (MLS) with the ground proximity warning system (GPWS), in accordance with de Havilland Service Bulletin 8–34–60, Revision C, dated November 1, 1991.

(1) If any vertical deviation wiring has been found that has not been properly installed and/or connected to link the MLS with the GPWS, prior to further flight, correct the wiring and perform a functional test of the system in accordance with the service bulletin.

(2) If vertical deviation wiring has been found that has been properly installed and/or connected to link the MLS with the GPWS, no further action is necessary.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20401 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92-ANE-22]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney JT8D series turbofan engines. This proposal would require initial and repetitive inspections of installed third and fourth stage low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. This proposal is prompted by reports of 19 uncontained LPT blade fracture events. The actions specified by the proposed AD are intended to

prevent inflight engine shutdown, engine cowl release, or uncontained engine debris penetrating the aircraft.

DATES: Comments must be received by October 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–22, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, Connecticut 06108. This information may be examined at the FAA, Office of Assistant Chief Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Engine Certification Office, ANE–140, FAA, New England Region, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7121; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–22." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–22, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

The FAA has received reports of 19 uncontained third and fourth stage low pressure turbine (LPT) blade fracture events that have occurred in Pratt & Whitney (PW) Model JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R turbofan engines. Thirteen events were attributed to fractures of the third stage LPT blade, and 6 events to fractures of the fourth stage LPT blade. In one LPT blade fracture event, uncontained engine debris damaged another engine on the aircraft.

The FAA has determined that PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines are susceptible to third and fourth stage LPT blade fractures due to excessively worn blade shroud crossnotches. Blade shroud crossnotches are also known as blade shroud contract surfaces. Excessively worn shroud crossnotches significantly increase the operating stresses in the blade, which can result in a blade fracture. This condition, if not corrected, could result in an uncontained engine failure and damage to the aircraft.

This proposed rule would require inspections of the third and fourth stage LPT blade shroud crossnotches on blades that are assembled in a blade set and installed in an engine. A blade set is a complete assembly of LPT blades installed in a rotor stage. If the inspections indicate the blade sets have excessively worn blade crossnotches, the blade set must be removed and replaced with a serviceable blade set. Engines that incorporate the improved third and fourth stage LPT containment hardware would not require these inspections. The containment hardware has been shown to be effective in containing third and fourth stage LPT blade fractures due to excessive blade shroud crossnotch wear.

Engines with a third stage blade set that contain improved third stage turbine blades installed in accordance with PW Service Bulletin (SB) No. 5331, dated October 27, 1982, do not require third stage blade set inspection. These blades are less susceptible to shroud crossnotch wear and have experienced no failures due to excessive crossnotch wear.

Engines that contain fan exhaust inner front duct segment assemblies that were installed in accordance with the requirements of PW Alert Service Bulletin (ASB) No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, do not require fourth stage blade set inspections. This hardware has been shown to be effective in containing fourth stage blade fractures due to excessive blade shroud crossnotch wear.

The FAA has reviewed and approved the technical contents of PW ASB No. 5913, Revision 5, dated August 10, 1992, that describes the third and fourth stage LPT blade set inspection procedures and replacement requirements.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, the proposed AD would require repetitive inspections for excessive LPT blade shroud crossnotch wear, and replacement as necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 9,600 PW JT8D series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that approximately 6,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed inspection at $55 per work hour. The estimated cost for performing the inspection is $330,000. The FAA also estimates that approximately 260 engines would be removed from service within 20 cycles or hours in service as a result of the initial inspection results, which will require approximately 123 workhours per engine at $55 per work hour for removal, repair and reinstallation. The estimated labor cost for the 260 engines would be $1,758,900. These engines would also incur an additional cost of $11,538 per engine for the repair and replacement of the third and fourth stage turbine blades. The estimated total cost for the repair and replacement would be $2,999,880. Based on these figures, the estimated total cost impact of this AD is approximately $5,088,780.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 92–ANE–22.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R turbofan engines except those engines containing fan exhaust inner front duct segment assemblies that are installed in accordance with the requirements of PW Alert Service Bulletin (ASB) No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, and either (a) PW honeycomb third stage outer airseal Part Number (P/N) 801931, 802097, 797594, or 798279; or (b) Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or (c) McClain International, Inc., P/N M2433; or (d) a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039. These engines are installed on but not limited to Boeing 737 and 727 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent third and fourth stage low pressure turbine (LPT) blade fractures that can result in an inflight engine shutdown, engine cowl release, or uncontained engine debris penetrating the aircraft, accomplish the following:

(a) Conduct initial and repetitive inspections on installed third and fourth stage LPT blade sets, and remove and replace with serviceable blade sets, as necessary, in accordance with the requirements of Part 1 of the Accomplishment Instructions of PW ASB No. 5913, Revision 5, dated August 10, 1992, as follows:

(1) Initially inspect the blade shroud crossnotches of the third stage LPT blade set when specified in paragraphs (a)(1)(i) or (a)(1)(ii) of this AD, whichever occurs later. Engines that contain a third stage blade set that have third stage turbine blades that were installed per the requirements specified in PW Service Bulletin No. 5331, dated October 27, 1982, do not require the third stage blade set inspection.

(i) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672; or

(ii) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(2) Initially inspect the blade shroud crossnotches of the fourth stage LPT blade set when specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, whichever occurs later. Engines that contain fan exhaust inner front duct segment assemblies that were installed per the requirements of PW ASB No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, do not require the fourth stage blade set inspection.

(i) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified Section 72–53–13 of PW JT8F Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672; or

(ii) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(3) Thereafter, reinspect the third and fourth stage LPT blade sets in accordance with the procedures and intervals specified in PW ASB No. 5913, Revision 5, dated August 10, 1992.

(b) An alternative method of compliance or adjustment of the compliance times that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, Engine & Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 14, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–20396 Filed 8–25–92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91–NM–99–AD]

Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model SN 601 series airplanes. This proposal would require inspection of the skins on the upper and lower passenger door frames to detect cracking and damage, and repair, if necessary. This proposal is prompted by reports of fatigue cracking in the upper and lower passenger door frame skin. The actions specified by the proposed AD are intended to prevent damage to the fuselage passenger door frame skin at the hinge axis.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-99-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-99-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model SN 601 Corvette series airplanes. The French DGAC advises that it has received reports of fatique cracking in the skin plating of the upper and lower passenger door frame. Such cracking, if not detected and corrected in a timely manner, could lead to damage to the fuselage passenger door frame skin at the hinge axis.

Aerospatiale has issued the following Corvette Service Bulletins:

a. Service Bulletin 53-21, dated June 25, 1990, describes procedures for inspection to detect cracks in the upper and lower frames of the passenger doors.

b. Service Bulletin 53-22, dated July 20, 1990, contains procedures for installing Modification 1291, which involves strengthening the passenger door frame by increasing the blend radii.

c. Service Bulletin 53-23, Revision 2, dated November 6, 1991, describes procedures for inspection of the upper and lower frames of the passenger doors following the incorporation of Modification 1291.

d. Service Bulletin 53-8, Revision 1, dated August 20, 1990, contains procedures for installing 1368, which involves reinforcement of the passenger door upper frame.

The French DGAC classified these service bulletins as mandatory and issued Airworthiness Directives 91-046-011(B) and 91-047-012(B) in order to assure the contained airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection of the skins on the upper and lower passenger door frames to detect cracking and damage, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $220. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 91-NM-99-AD

Applicability: All Model SN 601 Corvette series airplanes on which Modifications 1291 and 1368 have been incorporated, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the fuselage passenger door frame skins at the hinge axis, accomplish the following:

(a) Prior to the accumulation of 8,100 landings, or within 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,300 landings, perform a high frequency eddy current inspection of the skins on the upper and lower frames at the level of the passenger door hinge pins to detect cracks, in accordance with Aerospatiale Corvette Service Bulletin 53-21, dated June 25, 1990.

(1) If no crack is found as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,300 landings.

(2) If any crack is found as a result of the inspections required by paragraph (a) of this AD, prior to further flight, accomplish Modification 1291, in accordance with Aerospatiale Corvette Service Bulletin 53-22, dated July 20, 1990. Accomplishment of this modification constitutes terminating action for the inspections required by paragraph (a) of this AD.

(b) Prior to the accumulation of 9,100 landings or within 100 landings after incorporation of Modification 1291, whichever occurs later, and thereafter at intervals not to exceed 3,600 landings, perform a low frequency eddy current inspection of the upper door frame and a high frequency eddy current inspection of the lower door frame to detect damage to the fuselage passenger door frame skins at the hinge axis between Frames 11 and 12, in accordance with Aerospatiale Corvette Service Bulletin 53-23, Revision 2, dated November 6, 1991.

(1) If no damage is found as a result of the inspections required by paragraph (b) of this AD, repeat the inspections at intervals not to exceed 3,600 landings.

(2) If any damage is found as result of the inspections required by paragraph (b) of this AD, prior to further flight, accomplish Modification 1368, in accordance with Aerospatiale Corvette Service Bulletin 53-8, Revision 1, dated August 20, 1990. Accomplishment of this modification constitutes terminating action for the low frequency eddy current inspection of the upper door frame required by paragraph (b) of this AD; however the high frequency eddy current inspection of the lower door frame required by paragraph (b) of this AD must continue to be performed.

(c) An alternative method of compliance or adjustment of the compliance time that provides as acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20407 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-CE-40-AD]

Airworthiness Directives; Beech Models 58 and 58A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Models 58 and 58A airplanes. The proposed action would require replacement of the fuel crossfeed check valves. The Federal Aviation Administration (FAA) has received several reports of the operators of the affected airplanes using excessive force to operate the fuel selector valves because of pressure buildup in the crossfeed lines. The actions specified by the proposed AD are intended to prevent fuel selector valve failure caused by such a pressure buildup, which could result in the inability to control the fuel flow to the engines.

DATES: Comments must be received on or before November 10, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-40-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4145; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-40-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-40-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of the operators of certain Beech Models 58 and 58A airplanes using excessive force to operate the fuel selector valves because of pressure buildup in the crossfeed lines. Investigation has revealed that temperature changes have caused the fuel selectors to bind.

In the referenced reports, the fuel selector valves, part numbers 58-380109-1 and 58-380109-3, are a design change that is currently utilized on certain Beech Models 58 and 58A airplanes. These rotating plate type fuel selector valves were inadvertently designed without inherent pressure relief. As a result, the pressure increase that results from temperature increase and fuel expansion is trapped between the selector valves. As the pressure increases, the valves could become locked or the crossfeed lines may rupture, which could cause fuel leaks in the area under the floorboards of the cabin.

Beech has issued Service Bulletin (SB) No. 2454, dated May 1992, which specifies procedures for replacing the fuel crossfeed check valves with new valves that provide pressure relief.

After examining the circumstances and reviewing all available information related to the incidents described above,

the FAA has determined that AD action should be taken to prevent fuel selector valve failure caused by pressure buildup in the crossfeed lines, which could result in the inability to control the fuel flow to the engines.

Since the condition described is likely to exist or develop in other Beech Models 58 and 58A airplanes of the same type design, the proposed AD would require replacement of the fuel crossfeed check valves with new valves that provide pressure relief in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2454, dated May 1992.

The FAA estimates that 33 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $175 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,850.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 92–CE–40–AD.

Applicability: Models 58 and 58A airplanes (serial numbers TH–1488, TH–1600, TH–1613 through TH–1635, and TH–1638 through TH–1662, certificated in any category.

Compliance: Required within the next 50 hours TIS after the effective date of this AD, unless already accomplished.

To prevent fuel selector valve failure caused by pressure buildup in the crossfeed lines, which could result in the inability to control the fuel flow to the engines, accomplish the following:

(a) Replace both existing crossfeed check valves with new valves, part number 50–380170–39, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin No. 2454, dated May 1992.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on August 20, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20412 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–145–AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 series airplanes. This proposal would require inspection to detect cracking of the upper main fitting of the nose landing gear, and replacement, if necessary. This proposal is prompted by reports of cracking in the main fittings of the nose landing gear on two airplanes. The actions specified by the proposed AD are intended to prevent failure of the main fitting, which could lead to collapse of the nose landing gear during landing.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–145–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address

specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-145-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-145-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on British Aerospace Model BAe 146 series airplanes. The CAA advises that the manufacturer has reported that cracking has been detected in two nose landing gear main fittings. These two landing gear assemblies were early modification standard items. Such cracking, if undetected, could lead to failure of the main fitting, which could cause collapse of the nose landing gear.

British Aerospace has issued Service Bulletin 32-131, dated December 6, 1991, which describes procedures for conducting a one-time eddy current or ultra high sensitivity penetrant inspection to detect cracking of the nose landing gear main fitting, and repair or replacement, if necessary. (This British Aerospace service bulletin references Dowty Aerospace Gloucester Service Bulletin 146-32-108, dated November 6, 1991, for additional information.) The CAA classified this British Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require conducting a one-time eddy current or ultra high sensitivity penetrant inspection to detect cracking of the nose landing gear main fitting, and replacement, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,050. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 11 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness director:

British Aerospace: Docket 92-NM-145-AD.

Applicability: Model BAe 146 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main fitting, which could lead to collapse of the nose landing gear, accomplish the following:

(a) For airplanes on which nose landing gear part numbers 200876001 or 200876003 have been installed: Prior to the accumulation of 4,000 landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the nose landing gear, in accordance with British Aerospace Service Bulletin 32-131, dated December 6, 1991.

(1) If cracking is detected, prior to further flight, replace the currently installed nose landing gear with a serviceable unit or repair the crack in a manner approved by the Manager, Standardization Branch, ANM-113.

(2) If no cracking is detected, no further action is required by this AD.

(b) For airplanes on which nose landing gear part numbers 200876002, 200876004, or 201138002 have been installed: Prior to the accumulation of 16,000 landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the nose landing gear, in accordance with British Aerospace Service Bulletin 32-131, dated December 6, 1991.

(1) If cracking is detected, prior to further flight, replace the currently installed nose landing gear with a serviceable unit or repair the crack in a manner approved by the Manager, Standardization Branch, ANM-113.

(2) If no cracking is detected, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.97 and 21.199 to operate the airplane to a location where the requirement of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20402 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–11]

Proposed Revision of Transition Area: Fairview, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Fairview, OK. An amendment to the Non-directional Radio Beacon (NDB) Runway (RWY) 17 standard instrument approach procedure (SIAP), utilizing the Fairview NDB, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the amended NDB RWY 17 SIAP.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92–ASW–11, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone (817) 624–5535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Fairview, OK. An amendment to the Non-directional Radio Beacon (NDB) Runway (RWY) 17 standard instrument approach procedure (SIAP), utilizing the Fairview NDB, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the amended NDB RWY 17 SIAP. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore,—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration, proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulation, published April 30, 1991, and effective November 1, 1991, is proposed to be amended.

Section 71.181 Designation

* * * * *

Fairview, OK. [Revised]

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Fairview Municipal Airport (latitude 36°17'24"N., longitude 98°28'32"W.), and within 2.5 miles each side of the 006° bearing of the Fairview NDB (Latitude 36°17'14"N., longitude 98°28'39"W.), extending from the 6.3-mile radius to 7 miles north of the Fairview Municipal Airport.

* * * * *

Issued in Fort Worth, TX on July 7, 1992.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 92-17347 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 920786-2186]

RIN 0691-AA19

International Services Surveys: BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic Analysis is proposing to amend reporting requirements for the BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons.

The BE-22 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is the annual follow-on survey to the quinquennial BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons. Together, the two surveys produce a continuous annual time series of data on major types of services that are out of scope of other international services surveys.

The data from the BE-22 survey, together with the data from the related quinquennial BE-20 benchmark survey, are used to formulate U.S. international trade policy on services, support bilateral and multilateral trade negotiations, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

DATE: Comments on these proposed rules will receive consideration if submitted in writing on or before October 13, 1992.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 1006, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: BEA is proposing to amend 15 CFR part 801 by revising § 801.9 to set forth reporting requirements for the BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by Public Law 98-573 and Pub. L. 101-533). Section 4(a) of the Act provides that "The President shall, to the extent he deems necessary and feasible—(1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *; and (5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection * * *" In section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The survey updates, on an annual basis, summary data from the BE-20 Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons, which is taken once every 5 years. The most recent BE-20 survey covered 1991. The final rule implementing the 1991 BE-20 benchmark survey was published in the November 29, 1991 **Federal Register**, Volume 56, No. 230 (56 FR 60916). To provide continuity from that survey, the first year of coverage of the proposed BE-22 annual survey will be 1992.

Three major changes to the BE-22 survey since it was last conducted for 1990 are set forth in these proposed rules: (1) The exemption criteria for the survey would be changed to significantly improve the coverage of the survey and the accuracy of the geographic detail obtained for critical services.

BEA proposes changing the exemption level for the 1992 BE-22 survey to require respondents to report sales of a given service if total sales of that service exceed $1 million, and to report purchases of the service if total purchases of that service exceed $1 million. For the 1991 BE-20 benchmark survey, BEA required respondents to report sales of a given covered service if total sales of that service exceeded $500,000, and to report purchases if total purchases of that service exceeded $500,000.

In contrast to the exemption levels used in the 1991 BE-20 survey and proposed for the 1992 BE-22 survey, the exemption level used in the 1986 BE-20 and 1987-90 BE-22 surveys was based upon the size of individual, rather than overall, transactions, in a given service. Individual transactions of $250,000 or more during the year were required to be reported; smaller transactions were requested to be reported voluntarily. That exemption level did not provide adequate coverage of services that were large in total but comprised of many individual transactions of less than $250,000 each. Thus, a large proportion—over one-half—of the data for many types of services was reported only voluntarily by type, without any country detail, or were not reported at all. The 1991 and the proposed 1992 exemption levels assure that the largest transactors in a given service are required to report.

For both the 1991 BE-20 and proposed BE-22 surveys, respondents with transactions less than the threshold for mandatory reporting are *requested* to provide, on a voluntary basis, information on the total amount of transactions in each type of service. Both the voluntary and mandatory data may be estimated based upon the judgment of knowledgeable persons rather than on an exhaustive search of records.

To assess the likely effects of using a $1 million exemption level on the BE-22, BEA reviewed the data that were reported or estimated in 1990. In its calculations, sales of telecommunications services, and purchases of construction, primary insurance, and telecommunications services, were excluded; for these services, transactions with foreign persons tend to be so large that, even under a very high exemption level, reporting would still be required.

BEA estimates that, for sales (excluding telecommunications), approximately 30 percent of the firms in its 1990 universe estimate would be exempt under the proposed $1 million

exemption level, and 70 percent of the firms would continue to report. The firms that report would probably account for more than 95 percent of total sales of covered services, although reporting would be significantly lower than this for some individual foreign countries.

For purchases (except primary insurance, construction, and telecommunications), approximately 57 percent of the firms would be exempt under the proposed $1 million exemption level, and 43 percent of the firms would continue to report. The reporting firms would probably account for about 90 percent of total purchases of covered services, but reporting for some individual services and countries would be much lower.

In selecting the $1 million cutoff, BEA examined other alternative cutoffs (i.e., $2 million, $3 million, $4 million, and $5 million). For sales, reporting for most individual types of services is relatively high for all foreign countries combined under these alternative exemption levels. However, for purchases, reporting drops relatively sharply; less than 85 percent of the total data would be reported at the $2 million level, and well under 80 percent at the $3 million level. For some important services, such as computer and data processing services, legal services, and performing arts, reporting for all foreign countries combined drops especially sharply as exemption levels are raised above $1 million. For purchases of computer and data processing services, for example, only 52 percent of the total data would be reported under a $2 million exemption level. It should also be noted that the reporting of purchases and, to a lesser extent, sales of individual services cross-classified by individual foreign country—the level of detail required for the purpose of trade negotiations—drops particularly sharply as exemption levels are raised above $1 million. (2) Coverage of several small types of services would be eliminated.

During the review and OMB clearance of the 1991 BE–20 benchmark survey, BEA agreed to consider dropping the smallest types of services from the BE–22, assuming results of the 1991 and subsequent benchmark surveys show that these services continued to be small. The five smallest services then were: Agricultural services; management of health care facilities; mailing, reproduction, and commercial art; employment agencies and temporary help supply services; and accounting, auditing, and bookkeeping services.

Of these services, accounting services were relatively large in both 1990 and 1991, while the other services continued to be small. In 1991, transactions in accounting services were roughly $230 million (preliminary estimate), four times as large as employment agency services, the largest of the other four services considered for elimination in 1992. Also, the Bureau of Labor Statistics (BLS), a user of the BE–20/22 data, wrote BEA favoring continued coverage of accounting services, because they "appear to have significant figures." As a result, BEA is proposing to continue to cover accounting services but eliminate the other four services from the BE–22. (3) Several services not previously included on the survey would be added.

Except for the four services discussed above that would be dropped from coverage, BEA proposes to include all other services covered by the 1991 BE–20 on the BE–22, but without any detail by subtype. BEA also proposes to cover certain financial services on the BE–22 for the first time.

Under this proposal, three services covered for the first time in the 1991 BE–20 would also be covered in the BE–22. These services are losses recovered on purchases of primary insurance (prior to 1991, only primary insurance premiums were covered); receipts and payments for the purchase, sale, or use of rights to natural resources; and certain "miscellaneous" disbursements, consisting of outlays to fund news-gathering costs of broadcasters and the print media, production costs of motion picture companies and companies engaged in the production of broadcast material other than news, and costs of maintaining tourist, business promotion, sales, or representative offices, and for participating in foreign trade shows. Transactions in each of these services are significant and, from year to year, volatile. Continued collection of these data is particularly necessary for estimating transactions by individual foreign country.

Regarding financial services, BEA proposes covering direct purchases from foreigners of certain financial services—mainly those for which an explicit fee was paid—by U.S. firms that are not financial services intermediaries or providers. For example, certain financial services purchased directly from foreigners by a U.S. manufacturing firm would be covered, but the same services purchased by or through a U.S. bank or other financial services provider would not be covered. Thus, BEA is proposing to cover only a small part of the universe of financial services transactions on the BE–22. We plan to study further the best method of estimating the fees of financial services providers and the nonexplicit fees paid by firms that are not financial services providers before making proposals to cover these other types of financial services transactions. Those transactions may be included on a separate survey in the future, rather than on the BE–22.

Specifically, BEA proposes to obtain data on the BE–22 for the following types of services purchased directly from foreigners by nonfinancial U.S. companies.

- *Certain credit-related fees*—Fees for arranging credits, letters of credit, bankers acceptances, mortgages, factoring services, loan guarantees, etc., that are commonly provided by foreign banking establishments.
- *Explicit fees on securities transactions*—Explicit fees for securities (equities and derivatives) or futures trading, syndication, brokerage, etc., that are commonly provided by foreign investment banks and securities brokers or dealers.
- *Explicit fees for other financial services*—Explicit fees for asset/liability management, debt renegotiation, actuarial services, property management and other real estate services, etc. The type of service accounting for the largest portion of the data must be specified.

The burden on most U.S. firms from having to report these data is thought to be relatively small because most nonfinancial U.S. firms do not engage in these types of transactions directly with unaffiliated foreign persons every year. Also, many of the U.S. firms that do engage in such transactions will not be required to report because their transactions will be below the exemption level for mandatory reporting. For example, because credit-related fees normally are less than 1 percent of the principal amount of a line of credit would be in the range of $100 million to $200 million for the $1 million BE–22 exemption level for mandatory reporting to be exceeded. (The $1 million exemption level would be applied to total purchases of financial services in all three categories combined.)

Note that, for a consolidated U.S. enterprise that is comprised of both financial and nonfinancial subsidiaries, only transactions of the subsidiaries that are not financial services providers are covered. For example, an auto manufacturer that owns an auto finance company would respond to the financial services questions only for the manufacturing part of the firm. (As in the past, the other BE–22 questions would apply to both parts of the firm.)

BEA proposes to define financial services providers to include depository institutions, nondepository credit

institutions; security and commodity brokers, dealers, exchanges, and services; insurance carriers and pension funds; insurance agents, brokers, and services providers; real estate services providers; investment office, trusts, and miscellaneous investors (comprised of oil royalty traders, patent owners and lessors, and real estate investment trusts); and holding companies of financial services providers. This list is similar to Division H in the 1987 Standard Industrial Classification Manual, except that Division H includes all holding companies, not just holding companies of financial services intermediaries or providers.

Note that, with the exception of certain credit-related fees, BEA is *not* now proposing to cover purchases of financial services by firms that are not financial services providers where the fee for the service is not explicit. Examples of fees that would not be covered are those for purchases and sales of bonds, those required under swaps, and nonexplicit fees to foreign underwriters (where the underwriting fee is explicit, it would be covered under "explicit fees on security transactions" above).

BEA also proposes a minor change in the reporting of lease bonus payments. BEA proposes that these transactions be reported with purchases and sales of rights to natural resources to conform to the treatment in the U.S. national income and product accounts. Previously, these payments were reported with receipts and payments for the use of rights to natural resources.

BEA intends to mail the survey forms to respondents in January 1993, and either a completed form or a valid claim for exemption must be returned to BEA by March 31, 1993.

Copies of the proposed survey forms may be obtained from: Chief, Special Surveys Branch, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0632.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act.

The public reporting burden for this collection of information is estimated to vary from 4 to 500 hours per response, with an average of 11.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to the Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608–0060, Washington, DC 20503.

Executive Order 12291

BEA has determined that these final rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions in a given type of service with unaffiliated foreign persons exceed $1,000,000 during the year. In addition, international business, whether in goods or services, tends to be conducted mainly by the larger companies in a given industry. Finally, small businesses tend to have specialized operations and activities, so those that do have reportable transactions will likely have to report only one type of service; therefore, the burden on them should be relatively small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: August 13, 1992.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 801.9 [Amended]

2. Section 801.9(b)(6) is revised to read as follows:

* * * * *

(b) * * *

(6) BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons:

(i) *Who must report.* (A) Mandatory reporting—A BE–22 report is required from each U.S. person who had transactions (either sales or purchases) in excess of $1,000,000 with unaffiliated foreign persons in any of the covered services during the U.S. person's fiscal year. The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(B) Voluntary reporting—If, during the U.S. person's fiscal year, the U.S. person's total transactions (either sales or purchases) in any of the covered services is $1,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(C) Any U.S. person receiving a BE–22 survey form from BEA must complete all relevant parts of the form and return the form to BEA. A person that is not subject to the mandatory reporting requirement in paragraph (b)(6)(i)(A) of this section and is not filing information on a voluntary basis must only complete the "Determination of reporting status" and the "Certification" sections of the survey. This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(ii) *Covered services.* With the exceptions given below, the services covered by this survey are the same as those covered by the BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991, as listed in § 801.10(c) of this part. The exceptions are the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services—and the addition of coverage of purchases of certain financial services. The financial services covered are those directly purchased from or sold to foreigners by U.S. companies (or by domestic subsidiaries of consolidated U.S. companies) that are not financial services intermediaries or providers. Finally, lease bonus payments are to be reported with purchases or sales of rights to natural resources, rather than with receipts or payments for the use of rights to natural resources.

* * * * *

[FR Doc. 92-20073 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[Docket No. CGD8-92-16]

Drawbridge Operation Regulations; Lower Grand River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on LA 77 across the Lower Grand River (Intracoastal Waterway, Morgan City to Port Allen, Alternate Route), mile 47.0 at Grosse Tete, Iberville Parish, Louisiana. The requested regulation would permit the draw to remain closed to navigation from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m. on weekdays only, except holidays, and only during the months when local schools are in session. The primary purpose of this regulation is to provide school bus traffic undelayed use of the bridge during the school year. Presently, the draw opens on signal at all times.

This action will accommodate the needs of local school bus traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before October 13, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information:

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the draw in the closed position is 2 feet above high tide. Navigation through the bridge consists of tugs with tows, commercial fishing vessels and recreational craft. Data submitted by LDOTD show that from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m., Monday through Friday, about 1.5 vessels pass the bridge daily during each proposed regulated period. Originally, the bridge owner had requested a longer closure period. After studying the provided school bus traffic data, the Coast Guard felt that the buses should be able to tighten their scheduled runs enough to fit into each of the one-and-one-half-hour time frames. The bridge owner and the school officials concurred after recognizing the greater inconvenience that a longer closure would impose upon the mariner. Thus, the shortened proposed closure periods were agreed upon. The Coast Guard feels that vessel operators can easily become accustomed to the scheduled closures and will be able to adjust their arrival at the bridge to avoid the closure periods with little or no inconvenience or additional expense to themselves. This new annual regulation would become effective each year on or about August 15 (first day of the school year), and would remain in effect through about June 5 (last day of the school year). During the summer months the regulation would not be in effect. The proposed regulation will be of great benefit to the local schools, the school bus operators, the children that ride the buses to and from the schools, and should have no significant impact on navigation.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the proposed regulated periods should involve little of no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.478 is revised to read as follows:

§ 117.478

(a) The draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about 15 August to about 5 June (the school year) the draw need not be opened from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

(b) The draw of the S997 bridge, mile 41.5 (Landside Route) at Pigeon, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: July 30, 1992.

J. C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92–20357 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

The Higher Education Amendments of 1992

AGENCY: Department of Education.

ACTION: Notice of regional meetings to obtain public involvement in the development of proposed regulations for Parts B, G, and H of Title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992.

SUMMARY: The Secretary of Education will convene four public meetings, each to last for two days, to obtain public comment for use in developing proposed regulations for parts B (Federal Family Education Loan Program, formerly Guaranteed Student Loans), G (General Provisions Relating to Student Assistance Programs), and H (Program Integrity Triad) of Title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992 that were signed into law July 23, 1992.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Persons wishing to register or who wish other logistical information about the regional meetings or who wish to indicate their preferences for a location and for issue discussion groups should call (404) 768–3091. Persons wishing to obtain other information about these regional meetings should call either Mr. Chris Johnson or Ms. Opral Walker at (202) 708–5547.

SUPPLEMENTARY INFORMATION: The Secretary invites individuals and representatives of each of the groups involved in student financial assistance programs to attend these meetings. The Secretary particularly encourages students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies to attend and participate in these meetings. These regional meetings are convened to discuss only parts B (Federal Family Education Loans, formerly Guaranteed Student Loans), G (General Provisions Relating to Student Assistance Programs), and H (Program Integrity Triad) of Title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992 (Public Law 102–325). The issues to be discussed at the regional meetings will be those where the Secretary has the authority to set policy. To facilitate a full discussion of all the regulatory issues related to these parts of the statute, the Secretary has divided each regional meeting into 12 issue discussion groups and invites the public to participate in one or more of these groups, as listed below.

Title IV, Part B: Issue Discussion Groups for Federal Family Education Loans (Formerly Guaranteed Student Loans)

Group I: Simplification and Standardization Issues

Standard forms and procedures for the origination of loans, electronic funds transfer, guaranty of loans, deferment forms, forbearance, servicing, claims filing, borrower status change, and cures.

Standardization issues, including computer formats, form design, and guaranty agency procedures relating to origination, servicing, and collection of loans; alternative means of document retention; use of computers or related methods for maintaining records; implementing electronic data linkages for the exchange of information; rules and procedures for common reporting of data (including the definition of all relevant terms); and the common loan application form and promissory note for all programs under Part B.

Group II: Issues Related to the General Administration of the Loan Programs

Definition of adverse credit for the PLUS program; loan limits and interest rates; loan forgiveness demonstration program; loan forgiveness for closed schools; fraudulent loan-certification; income contingency loan repayment; graduated and income-sensitive loan repayment; debt management options that might include alternative repayment options for borrowers considered to be at high risk of default; new deferment provisions; definition of economic hardship for deferments; loan access and lender of last resort (LLR) service, including rules and procedures for ensuring efficient service and conditions after agencies notify the Secretary they believe the Student Loan Marketing Association (Sallie Mae) needs to begin providing LLR services; and limitation, suspension, and termination (LST) of lenders and schools.

Group III: Performance Standards for the Loan Program

Special insurance and reinsurance rules for the designation of lenders, servicers, and guaranty agencies for exceptional performance; regulations for third-party servicers; subrogation requirements related to developing criteria for determining whether an agency has made adequate collection efforts; standards for service and collection of loans; and guaranty agency and lender due diligence.

Group IV: Guaranty Agency Oversight

Guaranty agency agreement with the Secretary; guaranty agency solvency and minimum reserve levels; annual financial reporting; guaranty agency solvency and reserve levels; and guaranty agency management plans when (a) the agency falls below the required reserve levels for two consecutive years, (b) when reinsurance is reduced to 80 percent, (c) the Secretary determines that the agency's administrative or financial condition jeopardizes its ability to perform its

responsibilities, and (d) the Secretary assumes an agency's management.

Group V: Institutional Issues

Loan certification; loan delivery and refunds; determining borrower eligibility; entrance and exit counseling and other default reduction measures; and required reports and record retention.

Group VI: Lender Issues.

Lender audits; unconsummated loans; restrictions on interest and special allowance; loan disbursement; borrower defenses; loan origination; forbearance; and standardized lender agreements.

Title IV, Part G: Issue Discussion Groups for the General Provisions Relating to Student Assistance Programs

Group VII: Institutional Eligibility

Definitions of eligible institutions, eligibility of foreign institutions, and procedures for establishing and maintaining eligibility.

Group VIII: Participation in the Title IV Programs

Definitions of academic year and eligible program; program participation agreements; quality assurance program; refunds; consumer information; clock hour/credit hour conversions; audits; hearings; third-party servicers; sharing information; transferring allotment; and administrative expenses.

Group IX: Student Eligibility

Delivery system; ability to benefit; eligible noncitizens and Immigration and Naturalization Service (INS) match; Selective Service compliance; Social Security match; and verification.

Title IV, Part H: Issue Discussion Groups for Program Integrity Triad

Group X: State Postsecondary Review Program

Agreements between the department and the states for state review of postsecondary institutions; allocating federal funds among the states; effect of a state's nonparticipation; reimbursable expenses; substance of state review standards; and procedures and standards for adverse actions.

Group XI: Accrediting Agency Approval

New standards for recognizing accrediting agencies; "separate and independent" requirement; unannounced site visits; and limitation of recognition to agencies affecting student aid eligibility.

Group XII: Institutional Eligibility and Certification Procedures

Standards of financial responsibility; cash reserves; financial guarantees from school owners; administrative capability; on-site reviews of institutions; and provisional certification. If you wish to attend and participate in these regional meetings, you are requested to telephone 404/768-3091. Indicate which of the regional meetings you wish to attend and, for the meeting you select, indicate, in priority order, three issue discussion groups in which you wish to participate. As space for these meetings is limited by the conference room arrangements we have been able to make, we encourage you to telephone as soon as possible, but no later than five days prior to the regional meeting you wish to attend. We will be able to accommodate those interested in attending these meetings only to the extent space permits, so we encourage you to register early. If you register to attend a regional meeting at least 10 days prior to the date the meeting is scheduled to begin, we will mail you an information packet about the meeting. However, if you register later than this, you will need to get this packet at the meeting site at the conference check-in desk.

Meeting Information:

The dates and locations of the four regional meetings appear below. Each meeting will begin at 9 a.m. and conclude at 5 p.m. for each of the two days. We have included telephone numbers for the hotels where the meetings are scheduled should you wish to make hotel reservations. To receive the hotel's conference room rate, please inform the hotel that you are participating in the U.S. Department of Education's regional meeting.

(a) September 14 and 15, 1992, San Francisco, California, San Francisco Airport Marriott, 1800 Old Bayshore Highway, Burlingame, California 94010, Hotel telephone: 415/692-9100.

(b) September 17 and 18, 1992, New York, New York, Holiday Inn Crowne Plaza, 1605 Broadway at 49th Street, New York, New York 10019, Hotel telephone: 212/977-4000 or 1-800-243-NYNY.

(c) September 21 and 22, 1992, Atlanta, Georgia, The Westin Peachtree Plaza, 210 Peachtree Street, NW., Atlanta, Georgia 30303, Hotel telephone: 404/659-1400.

(d) September 29 and 30, 1992, Kansas City, Missouri, The Westin Crown Center, One Pershing Road, Kansas City, Missouri 64108, Hotel telephone: 816/474-4400.

Note: Early conference check-in will be available 6-8 p.m. the evening preceding each of the regional meetings. Check-in will also be available from 7:30 to 9 a.m. on the first day of the conference. You will find additional information for each meeting at the conference check-in desk.

(Authority: Section 492 of the Higher Education Act of 1965, as amended)

Dated: August 21, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-20471 Filed 8-25-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. 920666-2166]

RIN 0651-AA59

Changes in Practice Relating to Filing Patent Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; Extension of comment period.

SUMMARY: The Patent and Trademark Office (Office) is extending the comment period for the changes in Practice Relating to Filing Patent Applications to September 10, 1992.

DATES: Comments must be received by the Office of the Assistant Commissioner for Patents, by September 10, 1992.

ADDRESSES: Address written comments to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, marked to the attention of Jeffrey V. Nase. Correspondence may be sent by FAX to the attention of Jeffrey V. Nase at (703) 305-8825

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305-9282 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office published a Notice of proposed rulemaking in 57 FR 31344 (July 15, 1992) proposing to amend the rules of practice in patent cases to provide a uniform practice with respect to an oath or declaration and filing fees in continuing applications. The comment period was set to close on August 14, 1992. The comment period is being extended to September 10, 1992 to

ensure that all comments are considered.

Dated: August 21, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-20466 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY2-143-5111; FRL-4199-2]

Approval and Promulgation of State Implementation Plans; Wyoming; Revision to Section 3 Particulates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve, with conditions, a revision to section 3 Particulates of the Wyoming Air Quality Standards and Regulations (WAQSR) of the Wyoming State Implementation Plan (SIP). The revision to Section 3, which adds subsection (d), defines "ambient air" for surface coal mines located in Wyoming's Powder River Basin (PRB). This definition of ambient air is applicable to lands in the PRB that the State determines to be necessary to conduct surface coal mining operations, thereby making the air over these lands "non-ambient" with respect to emissions from the coal mining operation being conducted on a particular parcel of land, and, to that extent, not subject to the PM-10 National Ambient Air Quality Standards (NAAQS) or the Prevention of Significant Deterioration (PSD) particulate increments.

The Administrator of the Wyoming Air Quality Division originally submitted a SIP revision containing the revised Section 3 Particulates on September 6, 1988. Additional SIP materials have been submitted in the interim, and on September 4, 1990, EPA notified the State that SIP submittal was considered to be complete.

EPA's proposed approval of the revision begins the process of updating the Wyoming SIP and making the adopted State regulation federally enforceable.

DATES: Comments must be received on or before September 25, 1992.

ADDRESSES: Written comments on this action should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Copies of the applicable documentation are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Wyoming Department of Environmental Quality, Air Quality Division, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, (303) 293-1769, (FTS) 330-1769.

SUPPLEMENTARY INFORMATION: The Wyoming ambient air definition has been under review by EPA (which includes extensive discussions with the State and numerous State submittals) for a significant period of time. This definition has implications for SIP/regulation implementation and stationary source enforcement efforts in the PRB. As outlined below, the first section generally discusses the issues and EPA's conclusions, and detailed information is provided in the second section.

A. Overview

B. Background

1. State Definition Development.

2. State-issued Permits to PRB Surface Coal Mines.

3. Wyoming's Initial SIP Revision Submittals. A. The September 6, 1988, Submittal, B. The December 22, 1988, Submittal, C. The March 14, 1989, Submittal.

4. Ambient Air Dispersion Modeling Requirements and the Adequacy of EPA's Modeling Tools.

5. Demonstrating Short-term Attainment of the PM-10 Standards Utilizing Monitoring.

6. Wyoming's March 1990 SIP Submittals.

7. Impacts of the Clean Air Act Amendments of 1990.

C. EPA Action

A. Overview

On April 30, 1987, the State of Wyoming adopted a definition for ambient air specific to the PRB. Prior to adoption of this definition, the State had not defined ambient air by regulation but had been applying the concept to mean that portion of the atmosphere which is external to buildings, regardless of land ownership or control and whether or not public access was excluded. As applied to surface coal mining operations, all air resources outside of buildings were considered to be ambient.

Wyoming's application of the ambient air concept resulted in permit disputes involving the State and coal companies. Because dispersion modeling indicated exceedances of EPA's former primary and secondary NAAQS for total suspended particulates (TSP), the State determined that some coal mines might not be allowed to operate according to the existing mine plans and the associated desired production rates. The State chose a definitional change as a solution, seeking to create areas which would not be subject to the NAAQS but which would satisfy EPA requirements.

On April 30, 1987, Wyoming adopted the following definition:

(d) Ambient air, for the area bounded by Townships 40 through 52 North, and Ranges 69 through 73 West, inclusive, of the Sixth Principal Meridian, Campbell and Converse Counties, in the Powder River Coal Basin, is defined as that portion of the atmosphere, external to buildings, to which the public has access. For surface mining operations, the application of this definition will be limited to only those lands that are necessary to conduct mining operations as determined by the Administrator of the Wyoming Air Quality Division.

Following adoption, the State began to issue permits to PRB surface mines, applying the newly adopted definition of ambient air in these permit actions. The permits allowed maximum coal production for any given year in the life of each mine. In applying the new definition of ambient air, Wyoming treated the 30-year mine plan areas as "* * * lands that are necessary to conduct mining operations * * *" and exempt from ambient air with respect to each mine's own emissions. The State also required that public access be prevented to these lands. By these means, previously modeled exceedances were avoided since each mine's emissions could be subtracted from the total emissions impacting that mine's ambient air quality.

Upon receipt of these permits, EPA observed that: (1) Wyoming was implementing the new definition of ambient air before submitting the regulation revision to EPA for approval, (2) there was the possibility of TSP PSD increment and NAAQS violations, and (3) there was need for clarification regarding the enforceability of limits to public access.

On September 6, 1988, Wyoming submitted to EPA, as a SIP revision, the definition of "ambient air." EPA concluded that the adopted definition is acceptable. However, EPA had concerns with the dispersion modeling analysis for selected "worst case years" in the PRB, the protection of PSD increments,

and the limits on public access. First, the model utilized by the State in the modeling analysis had not been approved for use by EPA and was determined to be non-guideline. Therefore, the submitted modeling results for the annual TSP NAAQS might not be valid or reliable. Also, Wyoming did not include in the submittal modeling information for short-term (24-hour) TSP impacts on ambient air quality. Second, there was no indication in the submittal that the State tracks TSP increment consumption in the PRB. Thus, an adequate demonstration of protection of the TSP increments was not made. Third, EPA notes that the permits issued under the adopted regulation require that public access will be limited to the lands defined as necessary to conduct mining operations. Yet, neither these permits nor the SIP submittal contain language concerning how public access will be limited. (This is necessary since limitation on public access is essential to the concept of ambient/non-ambient air.)

EPA notified the State that the submittal was not complete and that Wyoming must commit to re-model the PRB for the next 30-year period. Wyoming must utilize an EPA approved guideline model to verify compliance with the PSD increments and NAAQS for particulates and include in all permits explicit language specifying the measures for prevention of public access. Wyoming committed to accomplish these measures, although opposition to utilizing EPA's approved modeling tools applicable to western surface coal mining operations was expressed.

After consideration of the State's position that EPA's approved modeling tools (guideline models and approved emission factors) did not accurately predict the impacts of emissions from surface coal mining operations on ambient air quality, EPA revised the modeling requirements as follows: (1) A short-term modeling study utilizing EPA-approved modeling tools must be conducted for the particulate NAAQS and PSD increments for the next three-year period; (2) the State would have the opportunity to develop (for EPA approval) modeling tools which could more accurately predict the impacts from surface coal mining operations in the PRB; and (3) within three years, Wyoming would conduct a 30-year "life of the mine" study for the applicable ambient air quality standards in the PRB utilizing EPA-approved models and emission factors. If the 30-year study demonstrated attainment, final action would be taken on the SIP.

While committing to accomplish the above, the State and the coal mining industry expressed dissatisfaction with EPA's requirement to utilize the existing approved modeling tools for the three-year modeling study. The two parties requested that EPA make a determination that the available modeling tools were not adequate and that an exemption be granted to Wyoming delaying the modeling requirements until adequate modeling tools exist. The State proposed that the three-year modeling study requirement be eliminated since there was no "on the ground" problem, as demonstrated by existing ambient air monitoring. EPA committed to consider the request to eliminate the three-year modeling requirement if it could be demonstrated, through monitoring, that the NAAQS were being protected.

On December 15, 1989, EPA concluded that processing the "ambient air" SIP revision could proceed without a formal modeling demonstration. While EPA did not share the State's and coal companies' belief that the EPA guideline model overpredicted the impacts of emissions from the PRB's surface coal mining operations, EPA acknowledged that the differences of opinion on the suitability and performance of the approved modeling tools were great enough to warrant a revision to the PRB attainment demonstration. For such a change to occur, the State had to commit to the following: (1) Demonstrate that the particulate NAAQS have been protected in the recent past—if the data show no violations, EPA will proceed with a proposed approval of the "ambient air" SIP action; if the data show violations, remedial action must be initiated; (2) submit a schedule to develop adequate modeling tools; (3) develop and implement an adequate monitoring network to adequately assess the ambient air quality around each mine during the next three-year period, with a commitment by the State to initiate expeditious remedial action if an exceedance of the NAAQS is detected by the monitoring network; and (4) submit a schedule to perform the 30-year modeling study utilizing EPA-approved modeling tools and to initiate expeditious remedial action if the modeling predicts exceedances of the applicable ambient air quality standards. On March 28 and March 29, 1990, Wyoming submitted information which would satisfy these requirements. (One revision to these commitments is the result of the Clean Air Act Amendments of 1990, which requires EPA, not the State, to develop adequate modeling tools.)

EPA has determined that the submitted ambient air monitoring data demonstrate past attainment of the particulate NAAQS in the PRB and that the "ambient air" SIP submittal was administratively and technically complete. EPA is satisfied that the applicable ambient air quality standards have been and will continue to be protected in the PRB and, thus, is proposing to approve, with conditions, the "ambient air" SIP revision. Unless EPA receives comments that demonstrate the inappropriateness of this approach, EPA will publish an approval, with conditions, in the **Federal Register**. If the State fails to achieve the conditions listed above, EPA will consider a SIP Call or other regulatory process to ensure attainment in the PRB. The basis for this proposal is that violations of the PM–10 standards will be mitigated in the interim period and that dispersion modeling to demonstrate long-term attainment will be performed following issuance of modeling procedures by EPA.

B. Background

1. State Definition Development

On April 30, 1987, the Wyoming Environmental Quality Council (EQC) adopted a definition for "ambient air" specific to approximately 2,340 square miles of Campbell and Converse Counties in northeast Wyoming, commonly referred to as the PRB. Eighteen surface coal mines are located in this region. This revision to Section 3 Particulates of the WAQSR became effective on June 5, 1987.

Prior to adoption of this revision, the NAQSR contained no definition of "ambient air." However, since the inception of its air program in the early 1970's, the State had been applying the term to mean that portion of the atmosphere which is external to buildings, regardless of land ownership or control and whether or not public access was excluded. As applied to surface coal mining operations, all air resources outside of buildings were considered to be ambient. This was a more stringent application than that of the EPA definition (see 40 CFR 50.1(e)). Wyoming's application of the ambient air concept resulted in permit disputes involving the State and coal companies. Wyoming proceeded to conduct dispersion modeling to investigate the resulting impacts of maximum production at surface coal mines in the PRB, measuring the cumulative impacts of each mine's emissions. The modeling

for certain "worst case" years predicted ambient concentrations as high as 85 micrograms per cubic meter (ug/m^3) of TSP within certain mine plan boundaries to which the public potentially had access. The modeling thus indicated exceedances of the EPA approved Wyoming Ambient Air Quality Standard (WAAQS) for TSP, which was 60 ug/m^3 on an annual basis. The modeled concentrations also exceed EPA's former primary and secondary NAAQS for TSP, which, on an annual basis, were 75 ug/m^3 and 60 ug/m^3, respectively.

As a consequence of the modeling, the State determined that some coal mines might not be allowed to operate according to the existing mine plans and the associated desired production rates. The State faced possible extensive litigation to sort out which mines had "grandfathered" rights to continue production, in the event of allowed increases in production at other mines. The State chose a definitional change as a solution, seeking to create areas which would not be subject to the WAAQS or NAAQS.

On March 16, 1987, EPA received a notice of public hearing from the State of Wyoming which contained a draft revision to Section 3 Particulates of the WAQSR. EPA responded to the State on April 23, 1987, stating:

(1) The definition of "ambient air" proposed in section 3(d) of the WAQSR, as it now reads, is overly broad and is not consistent with EPA's definition of ambient air. EPA noted that by including contiguous properties with common boundaries under control of more than one company, the proposed definition would incorrectly broaden the definition of ambient air since employees at one company's mine are included in the term "general public" with respect to any other mine.

(2) Public access must be effectively excluded, for example, by "fencing around the outer perimeter" and by assuring that the public does not have a right of access.

(3) The definition should be limited in effect to only those lands "necessary to conduct mining operations" in order to avoid the prohibition of unlawful dispersion techniques (see section 123(a)(2) of the Clean Air Act).

(4) PSD increments for particulate matter have been triggered in the PRB, and "* * * PAD TSP increments may be more constraining than the NAAQS."

(5) It would be acceptable for the State to adopt EPA's definition of ambient air in the PRB.

On April 29–30, 1987, the Wyoming EQC held a public hearing to consider the proposed regulation. After discussion of EPA's April 23, 1987, comments, the State's analysis of the issue, and public statements, the Wyoming EQC voted to revise the proposed regulation as described in the summary above. This regulation was adopted by the Wyoming EQC into the WAQSR on April 30, 1987, and become effective on June 5, 1987.

Under the adopted definition, air emissions from each mine are to be modeled utilizing receptor locations both on and surrounding leased areas. For receptor locations located on leased areas, and assuming that public access is prevented, the emissions attributed to that mine will be subtracted from the total pollution. Only the emissions from neighboring mines will "count" in determining whether an exceedance occurs at that location.

2. State-Issued Permits to PRB Surface Coal Mines

On November 12, 1987, the State issued permits MD–75 through MD–78 which modified the coal mine plans for four PRB surface mines. The State also modified two permits, MD–64A and CT–450A2, which provided interpretation of existing permits for two area surface mines. Wyoming applied the newly adopted definition of "ambient air" in these six permit actions.

The permits allowed maximum coal production for any given year in the life of each mine. In applying the new definition of "ambient air," Wyoming treated the 30-year mine plan area for each of the six mines (extending from 7.9 up to 22.0 square miles) as exempt from ambient air with respect to that particular mine. The State also required that public access be prevented to these lands. By these means, previously modeled WAAQS exceedances were avoided since each mine's emissions could be subtracted from the total emissions impacting that mine's ambient air quality.

Upon receipt of these permits, which were submitted on November 30, 1987, EPA identified some potential issues regarding the permit actions, as follows:

(1) Lack of a SIP submittal (Wyoming was implementing the new definition of "ambient air" before submitting the regulation revision to EPA for approval);

(2) Anticipated PSD increment violations (as indicated by the State on an earlier occasion);

(3) Anticipated TSP WAAQS violations (as determined by the State through dispersion modeling);

(4) Violation of requirements for the fiscal year 1988 (FT88) State/EPA Agreement (SEA), which provided for EPA review and comment prior to issuing final permits; and

(5) Need for clarification and enforceability of limits to public access.

These issues were documented in a January 26, 1988, EPA memorandum and discussed with the State during the FY88 SEA Staff Midyear review held in Cheyenne, Wyoming on February 3, 1988. Wyoming committed at that time to submit in the near future the definition of "ambient air" to EPA as a SIP revision and to address those issues listed above.

On August 24, 1988, the State issued Permit No. MD–91 which modified the coal mine plan for one surface coal mine, and on January 24, 1989, the State interpreted the lands necessary to conduct mining operations for Permit No. MD–60. These permit actions also took place prior to EPA approval of the regulation as part of the SIP.

Wyoming has interpreted "lands that are necessary to conduct mining operations" to be the land area equivalent to the "life of the mine," or approximately 30 years of expected coal mining at maximum production. In applying the new definition of ambient air, Wyoming has treated the 30-year mine plan area for each of the eight mines as exempt from ambient air with respect to that particular mine. By excluding each mine's emissions within its own mine plan area, the State was able to permit increased production at each mine up to the maximum possible in any one year, without showing exceedances of WAAQS or NAAQS. The State also required that public access be limited to these lands. By these means, the State has excluded the atmosphere above these lands from the State's particulate ambient air quality standards, and the modeled exceedances were avoided.

The eight permits issued by Wyoming under its new regulatory definition raised the following concerns:

(1) The permits include the condition that the coal companies will limit public access to the lands defined by the Administrator of the Wyoming Air Quality Division as necessary to conduct mining operations. EPA, in the April 23, 1987, letter to Wyoming, put the State on notice that EPA's definition of ambient air requires that public access be effectively excluded, by fence or other physical barrier. Yet, the coal mine permits do not contain language concerning how public access will be limited. In view of the amount of land involved, as well as the proximity of the mines to public highways and settlements, the permit condition as it stands is unenforceably vague. The permits should be required at least fencing and marking of lease boundaries

or excluded areas. The condition of restricting public access has been similarly interpreted in previous EPA SIP approvals (see 50 FR 7056, February 20, 1985).

(2) The permits do not specifically require adherence to the mine plans contained in the permit applications. Deviations from the mine plan could result in emission 'hot spots' if the working pits of adjacent mines come within close proximity. Because the dispersion modeling based on the current mine plans could be greatly affected if deviations occur, the State should require that the companies (a) adhere to mine plans, or (b) (If deviations are necessary) request to modify permits, update dispersion modeling, and update mine plans to mitigate the 'hot spots'.

(3) There are no enforceable permit conditions to restrict the area of stripped land within the 30-year lease boundaries, or to require fugitive dust control measures for stripped areas and topsoil and overburden stockpiles. this is not consistent with the State's modeling of fugitive emissions for these permit actions, which assumes that the company will limit the area of stripped land and implement dust control measures as represented in the permit application. However, if the company deviates from its mine plan, such that large areas are stripped of topsoil and some overburden in preparation for mining but are left idle for long periods of time, or if the company does not implement the dust control measures, then more fugitive emissions would result, possibly threatening or exceeding the ambient particulate standards and PSD increment.

PSD permits issued by EPA for PRB surface coal mines in the late 1970's typically incorporate enforceable permit conditions in the form of appendices and require adherence to mine plans. (At that time, surface coal mines were considered major sources and subject to PSD regulations.) These appendices include, among other requirements, dust control measures for topsoil stripping, topsoil and overburden stockpiles to prevent wind erosion from disturbed areas, as well as a limit on the average topsoil stripping advance. Such measures are not found in the State permits. Wyoming has contended that these activities, which are included in State permit applications, are an enforceable part of the final State permits, even if the permits do not specify these conditions or make specific reference to the permit application. In addition, the State would treat any deviation from a mine plan as a permit violation, which would result in an appropriate enforcement action. It has been EPA's position, however, that such implied restrictions on activity are not federally enforceable.

EPA and the State reached an agreement regarding these issues on March 14, 1989, when Wyoming committed to include in all permits (both existing and future) the following explicit language specifying the measures for prevention of public access:

(1) Fencing the entire permit boundary;

(2) Placing security guards at mine entrances;

(3) Posting "No Trespassing" signs at regular intervals along the fence; and

(4) Patrolling boundaries.

Additionally, Wyoming committed to:

(1) Include in all permits (both existing and future) explicit language identifying the terms and conditions of each permit, including a description of the mine plan, measures equivalent to best available work practices for dust control, and any other air pollution control activities; or

(2) Incorporate by reference all commitments and descriptions set forth in the permit application, unless superseded by a specific condition of the permit.

Wyoming's adherence to these conditions is evident in permits MD–103, MD–104, MD–102, MD–108, MD–114, and MD–122, which were issued on June 2, 1989, June 2, 1989, June 7, 1989, August 7, 1989, December 6, 1989, and April 6, 1990, respectively.

3. *Wyoming's Initial SIP Revision Submittals*

A. The September 6, 1988, Submittal

On September 6, 1988, Wyoming submitted to EPA, as a SIP revision, revised Section 3 particulates of the WAQSR containing the definition of "ambient air." This submittal also contained Wyoming's analysis of permit applications and permits issued based on the subject regulation change, and ambient air modeling for selected "worst case years" in the PRB. EPA's analysis of these permits is discussed above.

Regarding the adopted definition (as described above), the operative part of the first sentence tracks the language in EPA's definition of ambient air (see 40 CFR 50.1(e)). EPA concludes that the State's regulatory definition is valid on its face, although the second sentence is not clear. (The confusing wording in the second sentence in the definition creates problems in comprehensibility. The State defines "ambient air" and then states that the definition "will be limited to only those lands that are necessary to conduct mining operations * * *" The sentence makes it appear that the atmosphere over the mining operations is to be included in "ambient air," when just the opposite was intended.)

The subject definition, as written, appears to be acceptable. However, EPA had concerns with Wyoming's modeling analysis, the protection of PSD increments, and the limits on public access.

(1) *Wyoming's modeling analysis.* EPA noted that the model utilized by the State for surface coal mining applications was a non-guideline, rural version of the Climatological Dispersion Model (CDM), named CDM Wyoming (CDMW). CDMW has been employed principally in coal mining permit application reviews by the State and by many other non-State modelers since the late 1970's. No review or approval for use of this model had been obtained from EPA. Therefore, the submitted modeling results for the annual TSP WAAQS which were generated using CDMW may not be valid or reliable. Also, Wyoming did not include in the submittal modeling information or results for short-term (24-hour) TSP impacts on ambient air quality.

(2) *Protection of PSD increment.* There is no indication in this submittal that the State tracks increment consumption for the primary pollutant, TSP, in the PRB. The SIP submittal lacks any data about PSD increment consumption. EPA's regulations for PSD require that a SIP revision must "include a demonstration that it will not cause or contribute to a violation of the applicable increment(s)" (40 CFR 51.166(a)(2)). If a SIP is "substantially inadequate to prevent significant deterioration" or if "an applicable increment is being violated," the plan must be revised to correct the inadequacy or the violation (40 CFR 51.166(a)(3)). The submittal lacks both an annual and 24-hour TSP increment consumption analysis for the PRB and thus does not demonstrate adequate protection of the TSP increment.

Increment consumption includes not only emissions from PSD-permitted sources, but also emissions from all other sources in the area, including fugitive emissions. Fugitive emissions from minor sources such as the surface coal mines are increment-consuming and must be included (see 45 FR 52718, August 7, 1980, which states, "Any emissions not included in the baseline are counted against the increment").

The State has publicly acknowledged that the prospect of Class II TSP increment exceedances is a concern. In

an April 27, 1987, memorandum to the EQC, the Wyoming Air Quality Division acknowledged a concern about consumption of TSP increment, but advised the EQC to adopt the proposed ambient air definition anyway, stating, "The [Wyoming Air Quality] Division believes that the reclassification of this area to a Class III should be undertaken by the coal companies immediately." To EPA's knowledge, no effort has been made to reclassify the area.

As described in public hearing transcripts sent to EPA on November 18, 1988, the EQC voted on April 30, 1987, to initiate "at the greatest speed * * * an investigation into correcting the problem of allowing operations (at surface coal mines) so that we may result in de facto Class III air areas without having the opportunity to consider that in advance * * *" Such an investigation would not be necessary unless there were some expectation on the part of the EQC that Class II increment violations would occur. EPA has not received word of any State follow-up to the EQC's mandate.

The prospect of increment violations contradicts the EQC's "Statement of Principal Reasons for Adoption," which states, "Adoption of this regulation will not cause a significant change in the ambient air quality adjacent to coal company properties." The prospect of violations also suggests that the SIP revision is deficient per 40 CFR 51.166(a)(3). According to that section, "[i]f the Administrator determines that a plan is substantially inadequate to prevent significant deterioration or that an applicable increment is being violated, the plan shall be revised to correct the inadequacy or the violation."

(3) *Prevention of public access to the lands necessary to conduct mining operations.* EPA notes that the permits issued under the adopted regulation require that public access will be limited to the lands defined by the Administrator of the Wyoming Air Quality Division as necessary to conduct mining operations. Yet, as indicated above, neither these permits nor the September 6, 1988, submittal contain language concerning how public access will be limited.

Thus, on December 14, 1988, EPA notified the State that the submittal was not complete and requested that Wyoming submit the following additional information:

(1) A description of the CDMW model for review;

(2) Any additional ambient air modeling analysis applicable to the permitting of surface coal mines in the PRB;

(3) An analysis of PSD Class II TSP increment consumption in the PRB; and

(4) An analysis of the restriction of public access from "the lands necessary to conduct mining operations" as described in the State-issued permits.

B. The December 22, 1988, Submittal

On December 22, 1988, Wyoming submitted to EPA the information requested on December 14, 1988. This submittal consisted of the following:

(1) A description of CDMW;

(2) An analysis of PSD increment consumption in the PRB;

(3) An updated tabulation of the total permitted coal production in the PRB broken down into background and increment consuming rates; and

(4) A description of how the public is denied access to "the lands necessary to conduct mining operations."

EPA reviewed CDMW and found that CDMW is a Wyoming-modified version of the EPA-approved CDM dispersion model. Some of Wyoming's changes to CDM attempted to update the antiquated model to more modern capabilities. In fact, the newest guideline version of CDM, or CDM 2.0, includes some, but not all, of the Wyoming changes. However, EPA cannot consider CDMW and CDM to be comparable.

Wyoming also attempted to demonstrate that modeling results which utilized CDMW compare favorably with those utilizing the EPA-approved Industrial Source Complex Long Term (ISCLT) dispersion model. However, Wyoming's comparison between CDMW and ISCLT was not sufficient to satisfy the EPA requirements for use of a non-guideline model.

Thus, any dispersion modeling efforts (whether related to NAAQS or PSD increment consumption) utilizing the non-guideline CDMW model may not be valid or reliable. This determination is described in a February 20, 1989, EPA memorandum.

Wyoming's analysis of PSD Class II TSP annual increment consumption indicated two potential violators in the year 1994 in the South Gillette area. Thus, the proposed revision does not demonstrate "* * * that it will not cause or contribute to a violation of the applicable increment(s)," as required by 40 CFR 51.166(a)(2). (EPA notes that this increment analysis was performed using the non-guideline model CDMW, and that the State intends to re-model using an EPA-approved guideline model.)

Additionally, the increment analysis did not contain a review of 24-hour PSD Class II increment consumption. Without such an analysis, the proposed revision again lacks a "demonstration that it will not cause or contribute to a violation of the applicable increment(s)," as required by 40 CFR 51.166(a)(2). All sources, both point and fugitive, must be modeled for increment consumption once baseline has been triggered (see 45 FR 52718, August 7, 1980). Therefore, Wyoming's PSD Class II TSP increment analysis is inadequate. This determination is also described in the February 20, 1989, EPA memorandum.

Finally, Wyoming indicated in the submittal that the minimum requirements to restrict public access will include fencing the entire permit boundary, placing security guards at mine entrances, posting "No Trespassing" signs at regular intervals along the fence, and patrolling boundaries. As stated in a January 18, 1989, EPA memorandum, these measures seem to comport with national guidance on "ambient air" (see Douglas M. Costle's December 19, 1980, letter to Senator Jennings Randolph). However, Wyoming did not explicitly state that the subject requirements will be part of all State permits for surface coal mining operations in the PRB. The State must include these requirements in all permits in order to assure federal enforceability and protection of the public.

In a March 2, 1989, letter, EPA determined that the State must commit to accomplishing the following in order for EPA to propose to approve the subject SIP revision:

(1) Wyoming must model again using an EPA approved guideline model to verify compliance with the PSD Class II TSP increments, PM–10 NAAQS, and TSP WAAQS (since the State's adopted PM–10 Standards had not yet been approved by EPA as part of the State's SIP) for the 30-year "life of the mine" period. Ambient air dispersion modeling is the only method to predict future impacts on ambient air quality. EPA's authority for requiring such demonstrations of compliance is found in 40 CFR 51.166(a)(2) and 40 CFR 51.105. EPA's regulations for PSD require that a SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increments (40 CFR 51.166(a)(2)). EPA's regulations for SIP approval state that EPA will approve a SIP revision if EPA determines that the revision meets the requirements of the Clean Air Act (Act). One purpose of the Act is to protect and enhance the quality of air resources (see Section 101(b)(1) of the Act, 42 U.S.C. 7401(b)(1)), for which the Act provides national ambient air quality standards to protect the public's health and welfare (see Section 109 of the Act, 42 U.S.C. 7409). Thus, a SIP

revision must protect the NAAQS (40 CFR 51.105).

(2) Wyoming must compile an analysis of PSD increment consumption in the PRB to date. Wyoming must submit the modeling methodology to EPA for approval before performing this increment analysis.

(3) Wyoming must include in all permits (both existing and future) explicit language specifying the measures for prevention of public access identified in the December 22, 1988, submittal.

(4) Wyoming must include in all permits (both existing and future) explicit language identifying the terms and conditions of each permit, including a description of the mine plan, dust control measures equivalent to best available work practices, and any other air pollution control activities. Alternatively, EPA suggested that if the State did not wish to specifically list those terms and conditions, the following language may be added to each permit: "All commitments and descriptions set forth in the application for this permit, unless superseded by a specific condition of this permit, are incorporated herein by this reference and are enforceable as conditions of this permit."

(5) It is EPA's interpretation that the second sentence in the subject revision applies solely to surface coal mines (*i.e.*, Section 3 Particulates (d) " * * * For surface mining operations, the application of this definition will be limited to only those lands that are necessary to conduct mining operations as determined by the Administrator of the Wyoming Air Quality Division"). EPA requested that the State confirm that this sentence of the subject revision can be applied only to surface coal mines and no other industry, including surface mining operations for other minerals.

EPA had stated that the State must commit, by March 15, 1989, to accomplishing these items by mid May 1989.

C. The March 14, 1989, Submittal

On March 14, 1989, Wyoming submitted a commitment to accomplish the items contained in EPA's March 2, 1989, letter by mid May 1989. EPA responded on March 17, 1989, that, based on the State's March 14th commitment, EPA would proceed with a proposal to approve the "ambient air" SIP revision. Once the above commitments were accomplished, attainment of all applicable standards was demonstrated, and all comments received during the proposed rulemaking comment period was addressed, EPA would then proceed with final action on the SIP submittal.

EPA also stated that Wyoming must perform an increment analysis for all future permits issued to PRB surface coal mines. Wyoming took issue with the increment analysis requirement, stating that neither the WAQSR nor the federal PSD regulations require an analysis of increment consumption when permitting non-PSD sources. EPA took the position that, with each new permit issued in the PRB, the possibility for exceedances of the PSD particulate increments becomes more likely. On April 13, 1989, Wyoming's Assistant Attorney General responded in a letter to EPA, indicating that the State will review the ambient air quality in Wyoming's attainment areas at least every five years and, if necessary, implement a corrective program if an area is in noncompliance with ambient air quality standards or allowable increment. EPA is satisfied with this alternative.

4. Ambient Air Dispersion Modeling Requirements and the Adequacy of EPA's Modeling Tools

With submittal of modeling information in the September 6, 1988, SIP submittal, it became apparent to EPA that Wyoming was not utilizing EPA-approved modeling tools to determine the air quality impacts from surface coal mining activities. As discussed previously, Wyoming had been using the CDMW model to determine the impacts of emissions (mostly fugitive emissions) from surface coal mining activities in Wyoming. CDMW was used to determine compliance with the annual TSP WAAQS and NAAQS only; the State did not model for the 24-hour particulate standards, claiming that an appropriate method of modeling for the 24-hour standards was not available.

This issue was discussed with the State during the FY89 SEA Midyear review, held in Cheyenne, Wyoming on February 14, 1989. EPA pointed out that the appropriate emission factors for this application were available and could be found in EPA's "Compilation of Air Pollution Emission Factors" (commonly referred to as "AP–42"), and that the appropriate dispersion model for determining both the 24-hour and annual impacts was the Industrial Source Complex (ISC) model. EPA reaffirmed this position in the March 2, 1989, letter to Wyoming which required that dispersion modeling be conducted utilizing an approved EPA guideline model.

On April 12, 1989, EPA notified the State that Wyoming must perform 24-hour modeling and utilize an EPA-approved model for future surface coal mining permitting actions or potentially face a withholding of grant funds. A meeting was held on April 27, 1989, to discuss this issue and all PRB modeling activities.

The results of this meeting, as summarized in a May 9, 1989 letter from Wyoming to EPA, are as follows:

(1) Wyoming must conduct a short-term modeling study for the TSP NAAQS, TSP PSD increments, and PM–10 NAAQS utilizing EPA-approved modeling tools to determine the ambient air impacts of surface coal mining operations over the next three-year period. This satisfied Wyoming's concerns since the coal companies would not all be at full production during this period and there would be less of a chance of a modeled exceedance using tools which the State and the coal companies claim overpredict—especially for the 24-hour period. EPA was satisfied since Wyoming would determine the impacts of mining activities utilizing EPA-approved methods and it could be demonstrated that the applicable ambient standards were being protected. If the modeling demonstrated attainment, EPA could begin taking action on the "ambient air" SIP submittal.

(2) Wyoming could proceed with issuing permits to coal companies without performing 24-hour modeling for each. The results of the modeling studies would determine the impacts of mining operations on ambient air quality, and the permits could be reconsidered and reissued if corrective measures were necessary to address any modeled exceedances.

(3) Recognizing the concerns of the State and coal companies regarding the adequacy of EPA's approved modeling tools (models and emission factors), there would be an opportunity for the State, the coal companies, and EPA to develop modeling tools which could more accurately predict the impacts from surface mining operations in the PRB.

(4) There would also be an opportunity for the State to revise its PSD regulations and the Section 107 designated area boundaries (referred to as the air quality control region or "AQCR" in the letter) in Wyoming to eliminate the requirement to calculate PSD increment consumption in the PRB. Wyoming would solicit EPA guidance and support for this process.

(5) Within three years, Wyoming would conduct a 30-year "life of the mine" study for the applicable ambient air quality standards in the PRB utilizing EPA-approved models and emission factors. If attainment were demonstrated, final action would be taken on the SIP.

EPA followed up with a July 25, 1989, letter to Wyoming which reiterated the above elements and provided additional detail, as follows:

(1) If the three-year modeling study indicated exceedances, corrective action (*i.e.*, more stringent control measures or limits on production) would be necessary.

(2) Wyoming was to perform a preliminary life of the mine modeling study and assume that favorable conditions existed, such as an approved PM–10 SIP to eliminate TSP from consideration and a redesignation of the State's Section 107 areas to eliminate the requirement for a PRB PSD increment analysis. If attainment was demonstrated, this preliminary analysis would provide added support to EPA's proposed approval of the ambient air SIP action.

(3) The 30-year demonstration could differ from the three-year study in several ways. First, the State's PM–10 SIP would likely be approved, thus eliminating the need to model for the TSP NAAQS. Second, new models and emission factors could be approved and utilized. Third, the Clean Air Act could be amended which may change the modeling requirements for surface coal mines. Finally, the State could improve the best available work practices applicable to surface coal mines in order to reduce emissions from mining activities.

(4) The mid May due-date for modeling activities was revised as follows: (1) the State must commit to carry-out the above described work by August 7, 1989, and also provide to EPA a workplan for this work over the next two to four months.

Wyoming submitted such a commitment to EPA on August 8, 1989.

In a September 5, 1989, letter, the Wyoming Mining Association (WMA) expressed dissatisfaction with EPA's requirement to utilize the ISC model and AP–42 emission factors in the three-year modeling study. The WMA also expressed support for Wyoming's use of CDMW and State emission factors, claiming they were more appropriate for use in the PRB than EPA's. Other areas of concern stated by the WMA and with which the State agreed are as follows:

(1) The State's regulatory activities, including past modeling exercises, have ensured excellent air quality in the PRB while the mining industry has produced large volumes of coal.

(2) EPA is withholding approval of the "ambient air" SIP revision pending completion of the modeling exercise that Wyoming disagrees with, even though Wyoming's adopted definition of ambient air is consistent with EPA's.

(3) EPA is requiring Wyoming to model for TSP, which no longer exists at the State and federal level, adding additional costs to the project.

(4) There is no accurate model available for predicting compliance with the 24-hour particulate standards at surface coal mines.

(5) If inappropriate modeling resulted in restricted production levels, potential expansion could be limited and opportunities missed to provide low sulfur coal to reduce acid deposition (as required in proposed amendments to the Act).

EPA responded to item (2) above in a September 12, 1989, letter to Wyoming, stating that the adoption of a regulation which is as stringent as the federal requirements in no way implies automatic SIP approval. Wyoming had verbally asserted that the *Alabama Power Co.* v. *Costle* opinion so implied, which EPA refutes. EPA also cited federal regulations which provides EPA the authority to require demonstrations of compliance with the PSD increments and NAAQS, found in 40 CFR 51.166(a)(2) and 40 CFR 51.105, respectively. EPA's regulations for PSD require that a SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increments. EPA's regulations for SIP approval states that EPA will approve a SIP revision if EPA determines that the revision meets the requirements of the Act, which includes protection of the increments and NAAQS.

On October 11, 1989, EPA met with the State and representatives from Peabody Holding Company (Peabody) to discuss the WMA's concerns listed above. Peabody reiterated the position that the ISC model and EPA's emission factors do not adequately predict the ambient air impacts from Wyoming's surface coal mines, and, in fact, overpredicted by a factor of four to five times. Peabody proceeded to request that EPA make a determination that the available modeling tools are not adequate and an exemption be granted to Wyoming delaying the modeling requirements until adequate modeling tools exist. Wyoming argued that the requirement to model for the TSP NAAQS was unnecessary since the State had adopted the federal PM–10 standards and EPA was preparing to grant SIP approval to the State's PM–10 program. The State of Wyoming concurred with Peabody's position and proposed that the three-year modeling study requirement be eliminated since there was no "on the ground" problem, as demonstrated by existing ambient air monitoring. EPA agreed to drop the requirement to model for the TSP NAAQS and committed to consider the request to eliminate the three-year modeling requirement if it could be demonstrated, through monitoring, that the PM–10 NAAQS were being protected. In the interim, however, EPA required the State to continue its modeling efforts and submit a modeling protocol by December 1, 1989, and submit the three-year and preliminary 30-year modeling results by May 1, 1990. If these dates were not adhered to, EPA would return the "ambient air" SIP revision to the State and issue a SIP Call, which would require an evaluation of the PRB with respect to the applicable ambient air standards.

On October 27, 1989 (52 FR 48827), EPA proposed to approve the Wyoming PM–10 program, which includes the federal 24-hour and annual ambient standards, as part of the SIP. On July 10, 1990 (55 FR 28197), EPA issued final approval of Wyoming's PM–10 SIP.

EPA reaffirmed its position regarding the necessity to perform the modeling studies (as described in the July 25, 1989, letter) in a November 9, 1989, letter to Wyoming. EPA emphasized that timely completion of each step of the study was necessary so that action could be taken on the SIP submittal, which would result in permits issued to the PRB coal companies becoming consistent with the federally approved SIP.

EPA, the State, and the WMA met on November 21, 1989, to discuss the necessity of the three-year and the preliminary life of the mine modeling studies. The WMA and the State again took issue the EPA's insistence on utilizing EPA guideline modeling tools for these studies, the results of which could require limitations on coal mining activities. Wyoming discussed the actual "on the ground" air quality in the PRB, stating that air quality in the Gillette, Wyoming area (which is located in the center of the PRB) is in attainment of the PM–10 NAAQS and has actually improved during the past 10 years, even with increased mining production. Both parties again implored EPA to reconsider these modeling requirements.

5. Demonstrating Short-term Attainment of the PM–10 Standards Utilizing Monitoring

In a December 15, 1989, letter to Wyoming, EPA concluded that, because of the special circumstances described above, processing the "ambient air" SIP revision could proceed without a formal modeling demonstration. While EPA did not share the State's and coal companies' belief that ISC overpredicted the impacts of emissions from the PRB's surface coal mining operations, EPA acknowledged that the differences of opinion on the suitability and performance of the ISC model utilizing the EPA-approved emission factors were great enough to warrant a revision to the PRB attainment demonstration.

For such a change to occur, the State had to assure that the short- and long-term PM–10 NAAQS were being protected. Such assurance could be based on monitoring utilizing quality-assured ambient data for the most recent 12-month period (preferably calendar year 1989) from monitors which represent ambient air in the PRB. If it is determined that the PM–10 NAAQS are, in fact, being protected, EPA would have a sound environmental basis for proposing to approve the SIP revision, subject to conditions described below. EPA believes that these conditions will ensure ongoing protection of the PM–10 NAAQS.

The first condition would require Wyoming to commit, over a three-year period, to expeditiously develop an appropriate model and emission factors for western surface coal mines, in accordance with EPA-approved guidelines. The second condition would require that, for the interim period, the mining companies conduct extensive monitoring in the PRB and employ best available work practices to ensure that the PM–10 NAAQS are being protected. Such monitoring must be established in a manner consistent with current quality assurance guidance and the networks must be approved by EPA. Such monitoring networks must be established around the boundaries of each mine (even when contiguous with other mines) to ensure that the PM–10 concentrations in ambient air surrounding each mine are adequately assessed. If an exceedance of the PM–10 NAAQS occurs during monitoring, the mining companies must immediately institute remedial action necessary to prevent further exceedances. The third condition would require that once modeling tools are developed and approved by EPA, Wyoming must conduct the 30-year modeling study as described above. If necessary, Wyoming must use the results of this study to develop whatever control strategies may be necessary to protect the appropriate short- and long-term ambient air quality standards.

EPA requested that if the State chose to implement the above-described process, the following must be submitted to EPA by January 15, 1990:

(1) A schedule to provide to EPA all available quality assured ambient monitoring data in the Basin for calendar year 1989; if the data show no PM–10 NAAQS violations, and after the data have been properly quality assured, EPA will proceed with a proposed approval of the "ambient air" SIP action. If the data show violations that are caused by one or more mines, legally binding remedial action must be initiated by the State to eliminate these violations before EPA can take action on the SIP;

(2) A schedule to expeditiously determine the appropriate model and emission factors for surface coal mines in the PRB—this could entail comparing ISC to other available models or developing a new model and demonstrating its appropriateness in place of ISC using the "Interim Procedures for Evaluating Air Quality Models (Revised)'; (EPA–450/4–84–023);

(3) A monitoring network description and a schedule to develop and implement such a monitoring network to adequately assess the PM–10 ambient air quality around each mine;

(4) A commitment by the State to initiate expeditious remedial action if an exceedance of the PM–10 NAAQS is detected by the monitoring network;

(5) A commitment and schedule to perform the 30-year modeling study utilizing the modeling tools as determined in item 2 above;

(6) A commitment by the State to initiate expeditious remedial action if the modeling outlined in item 5 above shows exceedances of the applicable ambient air quality standards and, if appropriate, the PSD increment; and

(7) A schedule for other State efforts (i.e., a Section 107 redesignation, changes to the State regulations defining "baseline area" and "baseline date", etc.).

In conclusion, EPA stated that if the above proposal was not acceptable and an agreeable solution could not be reached, EPA would then require that the measures previously identified in the July 25, 1989 and November 9, 1989 letters be carried out.

On January 11, 1990, the State responded with a commitment to accomplish item 1 by April 1, 1990, and to develop a schedule to do work in support of items 2, 3, and 5 before April 1, 1990. The State also indicated that the EPC had scheduled a public hearing to consider the revisions identified in item 7.

Regarding the topic of establishing an extensive monitoring network for the three-year monitoring period, Wyoming had stated that this was not practical or necessary due to the vast area of the coal mining areas and the minimum severity of the problem. First, Wyoming stated that establishing such a network would be extremely expensive because it required getting power over vast areas to new samplers. Second, if monitors were placed between contiguous mining areas and exceedances were recorded, it would not be possible to determine which mine's emissions were causing the exceedances. Only modeling can determine source contribution, while the purpose of the monitoring proposal was to provide an alternative to the EPA-required modeling that the State had questioned.

On March 20, 1990, EPA responded to the State and retracted the statement, "Such monitoring networks must be established around the boundaries of each mine (even when contiguous with other mines) * * *," in favor of the position that monitors need be located only at the first and second maximum concentration sites for each active area of each mine, as determined by modeling, during each of the three years. EPA also agreed that it was not necessary for the State to make an additional commitment to initiate expeditious remedial action in the event that the monitoring network or the 30-year modeling study detect an exceedance. Such action is already a part of the State's enforcement role as outlined in permits issued to the mines, as mandated by regulation, and as committed to in the State's modeling protocol. Finally, EPA defined the milestone for performing the 30-year modeling study as April 1, 1993.

6. Wyoming's March 1990 SIP Submittals

On March 28 and March 29, 1990, Wyoming submitted information which would satisfy all outstanding requirements for information. Included in this submittal were the following:

(1) Ambient air monitoring data for calendar year 1989, the State's analysis of the data, a description of the existing company-operated monitoring network, and the quality assurance documentation for each coal company's network of samplers.

(2) A schedule and description of work to initiate the development of modeling tools for fugitive dust

emissions from PRB surface coal mines—Wyoming has already begun the process of validating various EPA models and State and EPA emission factors;

(3) A description of work and a schedule to develop and implement an approvable monitoring network for the PRB—a final monitoring protocol and network description will be submitted to EPA in January 1991;

(4) A commitment to initiate remedial action if an exceedance of the PM-10 NAAQS is monitored;

(5) A commitment to perform the 30-year life of the mine modeling study by April 1, 1993;

(6) A commitment to initiate remedial action if an exceedance of the PM-10 NAAQS or PSD increments (if applicable) is indicated by the 30-year modeling study; and

(7) An update on activities to revise the State's Section 107 designated area boundaries (to create a separate area for the PRB) and to revise the State's PSD regulations, to eliminate the need to determine PSD increment consumption in the PRB.

Wyoming also expressed concern regarding EPA's requirement to establish a maximum concentration network, based on modeling, in the PRB for each of the next three years. In a July 12, 1990, response to the March 28th and 29th submittals, EPA expressed satisfaction with all submitted information and commitments, but indicated that there was a need to resolve the issue of siting samplers for future monitoring efforts.

EPA and the State met on July 24, 1990, to discuss this issue. Wyoming indicated that this would not be practical or achievable since there was no existing modeling available for the three years in question, and the State did not have the resources to perform new modeling to determine first and second maximum concentration sites for each mine. Wyoming indicated a preference for determining maximum concentration sites utilizing best engineering practices. This would entail examining wind roses for predominant wind speed and direction, examining the proximity of each actively worked area with site boundaries, and then locating monitors in the area of estimated highest impact. Wyoming had been siting monitors in the PRB for the last ten years using this method, and expressed confidence that the existing network provided adequate coverage throughout the PRB. However, Wyoming did agree to re-examine the network to determine if it could be improved. EPA, satisfied that the State was committed to protect the PM-10 NAAQS, approved this method for siting monitors. The State committed to provide EPA with this methodology when submitting the revised network for EPA approval.

In a memorandum dated August 15, 1990, EPA determined that the PRB ambient air monitoring data for calendar year 1989 demonstrated past attainment of the PM-10 NAAQS, with some reservations. Those concerns regard the quality assurance procedures utilized by the coal companies. EPA informed the State of these deficiencies on October 9, 1990, and requires that they be corrected for future monitoring efforts.

7. Impacts of the Clean Air Act Amendments of 1990

On November 15, 1990, President Bush signed into law the Clean Air Act Amendments of 1990. Section 234 "Fugitive Dust" of Title II of the Amendments contains the following provisions:

"* * * the Administrator shall analyze the accuracy of the ISC model and AP-42 emission factors and make revisions as may be necessary to eliminate any significant over-prediction of air quality effect of fugitive particulate emissions from [surface coal mines]. Such revisions shall be completed not later than three years after the date of enactment * * *"

Thus, Wyoming's commitment to initiate the development of modeling tools for fugitive dust emissions from PRB surface coal mines is no longer applicable. This responsibility is now EPA's.

The schedule for performing the 30-year model study by May 1993 (as described above) is also impacted by the Amendments. Because EPA is required to analyze and revise (if necessary) the modeling tools within three years of the date of enactment, or November 15, 1993, the schedule for performing and submitting the 30-year study is revised such that Wyoming must submit the modeling protocol and schedule for completion of the study following discussions of the guidance EPA develops regarding the appropriate modeling tools for surface coal mining operations.

C. EPA Action

With the receipt of the March 28 and 29, submittals and the information and commitments contained with them, and the determination that the 1989 monitoring data demonstrate attainment of the PM-10 NAAQS, the "ambient air" SIP submittal was determined to be administratively and technically complete on September 4, 1990. EPA is satisfied the applicable ambient air quality standards have been and will continue to be protected in the PRB.

EPA is proposing to approve, with conditions, the "ambient air" SIP revision. These conditions and the associated milestones are summarized as follows:

Activity	Responsible agency	Milestone
Operate existing monitoring network in the Powder River Basin (PRB)	State	Ongoing.
Initiate remedial action if monitoring indicates exceedances of the PM-10 NAAQS	State	Ongoing.
Replace each TSP sampler that detects an exceedance with a PM-10 Sampler	State	Ongoing.
Initiate action if State submits to EPA a request to approve a PRB section 107 redesignation and revisions to the State's PSD "Baseline Definitions".	EPA	Ongoing.
Develop PRB maximum concentration ambient monitoring network and implementation schedule and submit to EPA for approval.	State	Spring '92.
Operate PRB maximum concentration monitoring network	State	Fall 1992.
Initiate final ambient air SIP action (in response to this proposed SIP action)	EPA	After monitoring network operational and comments on proposed rulemaking compiled.
Provide to EPA scope of work and schedule for completion of the PRB 30-year modeling study	State	Following issuance of EPA guidance.
Provide to the State comments on the scope of work and schedule for the 30-year modeling study	EPA	1 month after receipt.
Perform 30-year modeling study and submit results to EPA	State	Following EPA's approval of the modeling scope of work and schedule.

Activity	Responsible agency	Milestone
Initiate remedial action if modeling indicates exceedances of the applicable PM-10 standards	State	Ongoing.
Review 30-year modeling study results, determine attainment, and initiate final ambient air SIP action	EPA	45 days after receipt of results.

If these milestones cannot be attained, Wyoming must provide adequate justification and new milestones will be negotiated.

At the conclusion of the public comment period for this proposed rulemaking, EPA will consider all comments submitted and evaluate the progress made in attaining the above milestones. Unless EPA receives comments that demonstrate the inappropriateness of this approach, EPA will publish an approval, with conditions, in the **Federal Register**. If the State fails to achieve the conditions listed above, EPA will consider a SIP Call or other regulatory process to ensure attainment in the PRB.

Proposed Action

In this action, EPA is proposing to approve, with conditions, a revision to Section 3 Particulates of the WAQSR mining operations in the PRB. EPA's proposed approval of the SIP revision is based on the following criteria. First, Wyoming has demonstrated through ambient air monitoring that the PM-10 NAAQS in the PRB have been protected in the past. Second, Wyoming is to improve the PRB particulate monitoring network and continue to monitor in order to ensure that that the PM-10 NAAQS will be protected. Third, Wyoming must initiate remedial action if monitoring indicates an exceedance of the PM-10 NAAQS. Fourth, Wyoming is to perform a 30-year modeling study after issuance of EPA procedures and discussions on such procedures in order to demonstrate attainment of the PM-10 NAAQS or, if applicable, PSD particulate increments, over the permitted life of the surface coal mines in the PRB. Fifth, Wyoming must initiate remedial action if this modeling effort indicates exceedances of the applicable standards.

Additional information and detail on State submittals, EPA analysis of submitted information, and the correspondence referred to above can be found in the technical support document.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relations to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Interested parties are invited to comment on all aspects of this proposed action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401-7642.

Dated: January 28, 1991.

Jack McGraw,

Acting Regional Administrator.

Editorial Note: This document was receved at the Office of the Federal Register on August 21, 1992.

[FR Doc. 92-20458 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR PART 52

[IL12-18-5554; FRL-Y195-7]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency.

ACTION: Proposed stay.

SUMMARY: In the Rules section of today's **Federal Register**, USEPA is announcing a 3-month stay based on USEPA's decision to reconsider certain Federal rules requiring Reasonably Available Control Technology (RACT) to control volatile organic compound (VOC) emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). That action stays the effectiveness of the emission limitations and standards for metal furniture painting operations only as they apply to Allsteel Incorporated (55 FR at 26868-874, codified at 42 CFR 52.741(e)). USEPA is issuing that stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator with authority to stay the effectiveness of a rule for up to 3 months during reconsideration.

This action proposes, pursuant to CAA sections 110(c), 301(a)(1) and 307(d)(1)(B), 42 U.S.C. 7410(c), 7601(a)(1) and 7607(d)(1)(B), to temporarily stay the effectiveness of this rule as it applies to Allsteel's metal furniture painting operation, beyond the three months expressly provided in section 307(d)(7)(B), but only if and as long as necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question. Pursuant to the rulemaking procedures set forth in CAA section 307(d), 42 U.S.C. § 7607(d), USEPA hereby requests public comment on this proposed temporary extension of the three-month stay.

DATES: Comments on this proposal must be received by [September 25, 1992] at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by September 25, 1992 at the address below.

ADDRESS: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed in supplementary information. Interested persons may call Hattie Geisler at (312) 886-3199 to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed in supplementary information.

DOCKET: Pursuant to section 307(d)(1) of the CAA, 42 U.S.C. 7607(d)(1), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5AR92-8, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloris Butler before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southwest, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6036.

U.S. Environmental Protection Agency, Docket No. 5AR92-8, Air Docket (LE-131), room M1500, Waterside Mall, 401 M. Street SW., Washington, DC 20460, (202) 245-3639.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: In the Rules section of today's **Federal Register**, USEPA announces that, pursuant to CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), it is convening a proceeding for reconsideration of certain Federal rules requiring RACT to control VOC emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). Readers should refer to that notice for a complete discussion of the background and rules affected.[1] In that notice, USEPA also announces a 3-month stay of those rules during reconsideration. However, USEPA may not be able to complete reconsideration (including any appropriate regulatory action) of the rules within the 3-month period expressly provided by CAA section 307(d)(7)(B). If USEPA does not complete reconsideration in this timeframe then it will temporarily extend the stay of the emission limitations until USEPA completes final rulemaking action upon reconsideration. By this action, USEPA proposes a temporary extension of the stay beyond the 3 months provided in section 307(d)(7)(B), only if and as long as necessary to complete reconsideration of the rules in question. If USEPA takes final action to impose this stay, the stay would extend until the effective date of USEPA's final action following reconsideration of these rules.

By this notice USEPA hereby proposes, pursuant to CAA sections 110(c), 301(a) and 307(d)(1)(B), a temporary administrative stay of the effectiveness of the coating rule, (55 FR at 26868-874, codified at 40 CFR 52.741(e)), as it applies to Allsteel's metal furniture painting operation. USEPA hereby requests comment on such a proposed extension of the stay.

USEPA is proposing this temporary administrative stay of the rules in order to complete reconsideration of these rules, as discussed above. USEPA intends to complete its reconsideration of the rules and, following notice and comment procedures of section 307(d) of the CAA, take appropriate action. If the reconsideration results in emission limitations and standards which are more stringent than the existing FIP rules, USEPA will propose an appropriate compliance period following reconsideration. As a general matter, USEPA will provide an adequate period of compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. Note that, like the rules themselves, any USEPA proposal regarding the appropriate compliance period would be subject to the notice and comment procedures of CAA section 307(d).

USEPA recognizes the interests of the State of Wisconsin in this matter. The regulatory requirements that will be stayed, pursuant to today's action, were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practicable.

Under Executive Order 12291, this action is not "major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 11, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-20449 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

[1] In that discussion and as incorporated by reference here, USEPA makes expressly clear that, by its actions today, including this proposal, USEPA in no matter concedes that it violated any provision of the CAA or Administrative Procedure Act.

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40 CFR Part 80

[AMS-FRL-4199-1]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: This notice announces the time and place for a public workshop intended to help establish certification criteria and develop enforcement alternatives for the reformulated gasoline complex emissions model.

DATES: The public workshop will be held on September 10, 1992. It will start at 10 a.m. and will continue as long as necessary to complete the agenda.

ADDRESSES: The public workshop will be held at the Ramada Inn near the Detroit Metropolitan Airport. The address of the hotel is 8270 Wickham Road, Romulus, Michigan and the telephone number is (313) 729-6300. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-92-12, at: Air Docket Section (LE-131), U.S. Environmental Protection Agency, Attention: Docket No. A-92-12, First Floor, Waterside Mall, rm. M-1500, 401 M Street, SW., Washington, DC 20460.

Materials related to this rulemaking, including documents distributed at earlier workshops, have been placed in Dockets A-91-02 and A-92-12 by EPA. These dockets are located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. George Lawrence, Chief for the Eastern Field Office, Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone: (202) 233-9070, or Ms. Joann Jackson Stephens, Fuel Studies and Standards Branch, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone: (313) 668-4276.

SUPPLEMENTARY INFORMATION:

Background

Section 211(k) of the Clean Air Act, as amended in 1990, requires that EPA promulgate regulations establishing certification and enforcement requirements for a reformulated gasoline program. The reformulated gasoline

program has been developed in part through a process known as negotiated rulemaking. The agreement provided refiners with two modeling options for determining whether fuels meet the reformulated gasoline requirements. The first modeling option is the simple model which would be used to certify reformulated gasoline during 1995 and 1996. (See 57 FR 13416 (April 16, 1992) for a comprehensive review). Under the terms of the agreement, EPA is to develop a more sophisticated model (the complex model) which can be used in 1995 and will be required for use beginning in 1997 through a rulemaking to be completed by March 1, 1993. EPA is holding this workshop to expedite the development of the complex model enforcement regulations and promulgation of a final rule for the reformulated gasoline program. The workshop will be open to the public.

Public Workshop

The September workshop will include the following topics:

Review of Non-linear Parameters and Interactive Effects

This topic will include a review of available data regarding parameters showing non-linear emission responses and interactive effects with other parameters. The purpose of this review is to provide examples of real-world scenarios involving such effects which may require modifications to the enforcement certification measures outlined for the "simple model" rulemaking.

Proposal of Certification and Enforcement alternatives

This topic will focus on approaches to ensure appropriate certification and enforcement of requirements of the reformulated gasoline program, despite the existence of interactive/non-linear effects as discussed above. Of special concern are ways to assure gasoline fungibility while meeting the required in-use benefits of reformulated gasoline, without impairing the ability of the Agency to enforce the program. Workshop participants are encouraged to comment on the feasibility and practicality of proposed certification and enforcement options.

Other presentations regarding possible reformulated gasoline certification and enforcement methods are encouraged. Those interested in making such presentations should notify Joann Jackson Stephens at (313) 668-4276 or George Lawrence at (202) 233-9307 of such intent at least seven days before the workshop. Interested speakers should also provide an estimate of the time required for the presentations and any need for audio/visual equipment. Questions will be taken after each presentation.

Public Participation

EPA strongly encourages full public participation in the development and assessment of information that will be used in developing the proposed complex model. This workshop will help determine the methods used by the Agency in certifying and enforcing reformulated gasoline under the proposed complex model. EPA welcomes public input regarding the methods most appropriate for use in certifying reformulated gasoline and enforcing the RFG program.

EPA suggests that enough copies of the material for presentation be brought to the workshop for distribution to the audience. EPA anticipates attendance of approximately 80 people. In addition, it will be helpful for EPA to receive an advance copy of any material for presentation before the scheduled workshop date so as to allow EPA staff to give such material full consideration.

Mr. Richard Rykowski, Chief for the Fuel Studies and Standards Branch in the Regulation and Support Division and Ms. Mary Smith, Director of the Field Operations and Support Division of EPA's Office of Mobile Sources will co-chair the workshop. The workshop will be conducted informally, and technical rules of evidence will not apply.

Dated: August 18, 1992.

Thomas Kiernan,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-20459 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-268; FCC 92-332]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing policies, procedures and technical criteria to be used in allotting channels for advanced television (ATV) service. Included in this action is a "draft" proposal for an ATV Table of Allotments. The goal of this allotment effort is to provide a 6 MHz ATV channel for each existing broadcast TV station. This is the sixth in a series of actions leading to the implementation of ATV service for the American public.

DATES: Comments must be submitted on or before October 13, 1992 and reply comments on or before November 12, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202-653-8162) or Robert Eckert (202-653-8163), Office of Engineering and Technology, or Gordon Godfrey (202-653-9660), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rule Making in GEN Docket No. 87-268, FCC 92-332, adopted July 16, 1992 and released August 14, 1992. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1990 M Street, NW., Washington, DC 20036, (202) 452-1422.

Summary of the Second Further Notice of Proposed Rule Making

1. The Commission is proposing policies, procedures and technical criteria to be used in allotting channels for advanced television (ATV) service. Included in this action is a "draft" proposal for an ATV Table of Allotments. The goal of this allotment effort is to provide a 6 MHz ATV channel for each existing broadcast station in a manner that will maximize the coverage of ATV stations, while at the same time taking into account interference to existing NTSC stations and between ATV stations. This is the sixth in a series of Commission actions leading to the implementation of ATV service for the American public.

2. This Second Further Notice of Proposed Rule Making (Further Notice) is the first step towards the adoption of an ATV Table of Allotments. The next step will be to finalize the allotment policies and procedures and to issue a proposal for the "final" ATV Table. After that Notice is issued, there will be a period for broadcasters to conduct negotiations among themselves on allotment and pairing arrangements and to submit any such arrangements to the Commission. To the extent possible, broadcaster agreements would then be

included in the final Table. This plan is intended to provide industry and other interested parties with the maximum opportunity to participate in the formulation of ATV allotment and assignment policy and to negotiate agreements for both allotments and assignments.

3. The Commission will consider information from the comments filed in response to this Further Notice and other sources, such as data from the testing of the proponents' technical systems, in finalizing its ATV allotment policies and preparing its proposal for a final ATV Table. Interested parties are also advised that the Commission intends to consider alternative proposals for the underlying principles set forth herein that will guide the development of the ATV Table, and request interested parties to submit specific proposals for such alternative approaches.

4. The purpose of the draft Table of ATV Allotments included in the Further Notice is to aid broadcasters and other interested parties in focusing their comments on the allotment policy proposals. Interested parties are asked to examine the draft Table in formulating comments and alternative proposals regarding ATV allotment and assignment policy issues. The Commission emphasizes that the final ATV Table may change significantly from the draft Table due to factors such as changes to its ATV allotment policy proposals, the final performance characteristics of the ATV technical system, and the results of its international coordination of ATV allotments with Canada and Mexico. The Commission therefore does not seek comments on the specific channel allotments indicated on the draft Table attached to this Further Notice. Rather, the Commission plans, at the time it propose the final ATV Table, to provide opportunity for comment on individual channel allotments as well as a specified period of time for broadcasters to negotiate and submit allotment/pairing plans for ATV.

5. The Commission proposes four broad ATV allotment objectives. The first of these objectives is to provide all existing broadcasters with a channel for ATV service. This will benefit the public by preserving the service of all of the existing TV broadcast stations. It will also ensure that all existing broadcasters have an opportunity to participate fully in the transition to ATV service.

6. The second objective is to maximize the service areas of all ATV stations. Along with a general maximization of service area objective, it is important to enable ATV stations to serve geographic areas that encompass their communities of license and the surrounding market areas. The Further Notice therefore also proposes to establish a minimum ATV service area objective. This objective is to provide ATV stations the capability to serve the area within a 55 mile radius of their transmitter sites. The Commission also requests comment on an alternative service area allotment objective suggested by its Advisory Committee on Advanced Television Service and several others. This alternative objective would seek to pair ATV allotments with existing NTSC stations, using a process that would attempt to replicate the coverage areas of existing stations.

7. The Commission observes stated that its spectrum studies indicate that the majority of ATV channels will have to be allotted to UHF frequencies. These studies also show that relatively few VHF channels could be made available for ATV in television markets in the more densely populated areas of the country. Further, the Commission believes there would be substantial public interest benefits in locating all ATV channels in the same area of the spectrum. The third objective therefore is to allot all ATV channels to the UHF band.

8. Because ATV will be the medium of the future, the fourth objective is to prefer new ATV operations over NTSC operations in the allotment process. This preference is intended for allotment purposes only. The Commission stated that it would take into account protection of any affected existing NTSC service in actual ATV operations during the transition period.

9. The draft ATV Table of Allotments included in the Further Notice meets these proposed objectives.

10. The Commission also presents a number of proposals for other policies, procedures and technical criteria to be used in allotting ATV channels. These proposals are to: (1) Use geographical separation standards to regulate the allotment of ATV channels; (2) attempt to optimize the distances between ATV allotments and between ATV allotments and existing NSTC stations; (3) adopt minimum spacing requirements consistent with available information on expected ATV system performance; (4) attempt to allot channels at distances that meet or exceed the minimum spacings necessary to meet the 85–90 km service area objective and, where this is not possible, allot channels at short-spaced distances to achieve full accommodation; (5) after the initial implementation, delete all short-spaced ATV allotments that have not been activated by an eligible broadcaster; (6) specify the reference points of ATV allotments as the coordinates of the transmitter sites of existing NTSC stations; (7) use vacant existing non-commercial NSTC allotments for ATV allotments, but only where necessary; (8) if it is decided to use the VHF band or ATV channels, refrain from using channels 3 and 4 in the same community except where no alternative exists, and avoid using TV channel 6 wherever possible; and, (9) protect land mobile authorizations on channels 14–20.

Procedural Matters

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comment on or before October 13, 1992 and reply comments on or before November 12, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial regulatory flexibility analysis (IRFA) is as follows:

Reason for Action

In this rule making action the Commission presents proposals for the policies, procedures and technical criteria that it will use in allotting channels for broadcast ATV service.

Objectives

The objectives of this action is to obtain comment and information that will assist the Commission in allotting ATV channels. The Commission's objective is to allot ATV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast televisions service during the period of transition from NTSC to ATV service.

Legal Basis

The proposed action is authorized under sections 4(i), 7, 301, 302, 303 and 307 of the Communications Act of 1934,

as amended, 47 U.S.C. 154(i), 157, 301, 302, 303 and 307.

Reporting, Recordkeeping and Other Compliance Requirements

The proposals set forth in this action would involve no changes to reporting, recordkeeping and other compliance requirements beyond what is already required under the current regulations.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact and Number of Small Entities Involved

The ATV Table of Allotments that will ultimately be developed through the series of activities beginning with this action will affect all of the 1886 commercial and noncommercial broadcast television stations eligible for an ATV channel in the initial transition phase. Many of these stations are small entities. It is expected that these allotments will constitute the population of channels on which broadcasters will operate ATV service in the future. The individual ATV channels that appear on the final Table may not all offer the potential for the same degree of geographic coverage broadcasters will seek to serve. Allotment of these channels is therefore expected to be very important to the broadcast community. All of the affected stations will have to obtain new transmission facilities and to a varying extent, production equipment to operate on the new ATV channels. The cost of equipment to operate on these new channels is expected to vary from $750,000 upward to $10 million. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in ATV programming and origination.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

The process of allotting the ATV channels is an optimization task that offers a great number of possible alternative "mixes" of channel allotments for each community. In evaluating the merits of allotment alternatives, the Commission intends to make every effort to accommodate the needs and concerns of all affected parties. The ATV Table of Allotments proposed herein is a "first draft" intended to provide broadcasters with a view of how channels might be allotted across the individual TV markets. The Commission fully expects that the final Table that is adopted will contain many revisions of the allotments proposed herein.

13. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq* (1981).

14. This action is being taken pursuant to authority contained in sections 4(i), 7, 301, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157, 301, 302, 303 and 307. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-20368 Filed 8-25-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-43; Notice 01]

RIN 2127-AE56

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to exclude coiled brake hose assemblies from the oil resistance requirement of Standard 106, *Brake Hoses*. Coiled assemblies are designed for use between the vehicle frame and axle or between a towed and a towing vehicle. The agency has tentatively concluded that the oil resistance requirement is unnecessary for coiled tubing, because such tubing is apparently not exposed to significant amounts of oil and to hot temperatures during normal vehicle operations. The proposal responds to a petition for rulemaking from Philatron International. The notice also proposes other minor amendments.

DATES: Comments on this proposal must be received by NHTSA no later than September 25, 1992. If adopted in a final rule, these amendments would take effect 30 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday. Telephone: (202) 366-4949.

FOR FURTHER INFORMATION CONTACT: Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-5274.

SUPPLEMENTARY INFORMATION:

Petition for Rulemaking

This notice responds to a petition for rulemaking submitted by Philatron International, a California-based company that has recently expanded its operations and entered the brake hose (tubing) industry. (Brake "hose" and "tubing" are used synonymously in this notice. Tubing such as that manufactured by Philatron is considered brake hose under Standard 106; see, S4 of the standard for the definition of "brake hose.")

Philatron has developed a "new" type of coiled air brake tubing for use between a truck tractor and trailer. What is different about Philatron's coiled tubing is its composition. The industry has traditionally manufactured coiled tubing from virgin polyamide nylon. Philatron's tubing is made from ethylene vinyl acetate, a type of plastic material used in the past only for manufacturing industrial-type hoses.

Philatron believes that its tubing has safety advantages over nylon tubing, which the petitioner claims is "routinely plagued by kinking, snagging and constriction safety failures." According to Philatron, its tubing is superior to nylon in "durability, flexibility and coil memory." The petitioner believes that because of these features, fewer linear feet of Philatron tubing are needed than of nylon tubing for a given installation. "Because the air does not need to go as

far to actuate the brakes," Philatron states, "vehicles can stop faster." Philatron claims that the slightly shorter lengths of tubing result in "increased braking efficiency of between and 16 and 23 percent over nylon tubing." The petitioner also believes the shorter lengths of tubing lessen the possibility the tubing will become tangled with vehicle parts.

Despite its alleged safety advantages in these areas of performance, Philatron's tubing does not comply with Standard 106 in another area of performance. The particular requirement with which the tubing fails to comply is the oil resistance requirement in S7.3.4 of the standard. S7.3.4 states: "After immersion in ASTM No. 3 oil for 70 hours at 212 °F, the volume of a specimen prepared from the inner tube and cover of an air brake hose shall not increase more than 100 percent * * *." In NHTSA's compliance test of the tubing, the specimen liquified during the high temperature oil exposure, and did not re-solidify after cooling. (Final Report No. 106-ETL-92-001-513158, May 13, 1992). The tubing met all other requirements of the standard.

Philatron believes there is no safety need to apply the oil resistance requirement to its tubing. In support of its petition, Philatron argues that its tubing is not exposed to any oil or heat source when used on a vehicle. According to Philatron, the vehicle's wet tank and/or air drying system removes any oil from the air that will be contained in the tubing. Also, the tubing is used between a towing and a towed vehicle, "at a significant distance from any sources of hot or non-heated oil."

Philatron argues further that there is information that shows that its tubing performs adequately when exposed to oil under conditions other than those of S7.3.4 (70 hours, 212 °F). Under Standard 106's burst strength requirement (S7.3.9), a brake hose assembly must withstand hydrostatic pressure of 800 psi, without being subjected to oil immersion. Philatron tested its tubing for burst strength after the tubing, with couplings plugged at the end, was immersed in ASTM No. 3 oil for 3,310 hours in temperatures ranging from 33 °F to 90 °F. According to Philatron, the tubing burst at 1,200 pounds per square inch (psi). Philatron also tested the burst strength of the tubing, without the couplings, after the tubing was immersed in oil for 70 hours at 134 °F. Philatron said the tubing burst at 1050 psi. Philatron said this test temperature was chosen to match the highest temperature recorded in this country, 134 °F., in Death Valley, California on July 10, 1913.

The petitioner also refers to other information to support its belief that the tubing performs safely. Philatron states that it sold approximately forty-five thousand four hundred (45,400) hose assemblies before determining that the tubing did not comply with S7.3.4. According to the petitioner, not a single Philatron air brake hose has failed for any reason.

Based on these facts and arguments, Philatron requested NHTSA to amend the oil resistance requirement so that it does not apply to coiled brake tubing. Adopting that amendment would permit Philatron to manufacture and sell its tubing in the future.

In a related action, Philatron notified NHTSA in January 1992 that it had determined that its hoses did not comply with the oil resistance requirement. It also filed a petition with NHTSA for a determination that the noncompliance was inconsequential as it related to motor vehicle safety. On June 15, 1992, NHTSA published a notice granting the petition (57 FR 26687). As a result, Philatron is not required to conduct a notification and remedy campaign with respect to the hoses that it manufactured prior to January 1992. However, in the absence of an amendment to the Standard, under section 108(a) of the Safety Act, Philatron may not manufacture or sell any of its hoses which do not comply with the S7.3.4 requirements.

Comments by Parker Hannifin on Rulemaking Petition

Parker Hannifin, another air brake hose manufacturer, has written to the agency objecting to the relief sought by Philatron in its petitions. Parker Hannifin believes that coiled tubing is exposed to hot oil during normal vehicle operations. In this comments on Philatron's petition for inconsequentiality, Parker Hannifin states that coiled tubing could contact oil leaking from the air brake compressors that are used on all heavy duty air-braked trucks, and from splashing and spilling during vehicle refueling or servicing. Parker Hannifin also argued that the tubing is exposed to oil in the environment in which coiled tubing is commonly used. In support of those arguments, that manufacturer produced photographs of vehicles in use, taken at a truck stop, that appeared to show the coiled tubing on the vehicles covered with oil.

Parker Hannifin believes that the oil resistance requirements should be retained because coiled tubing assembly made from material that can withstand oil under the conditions described in S7.3.4 is better able to resist abrasion, retain its coiled shape and resist heat. That company is concerned that excluding coiled tube assemblies from the oil resistance requirement could lead to the manufacture and sale of tubing that does not perform so well as nylon tubing in these areas.

Parker Hannifin argues that these three areas of performance are important for safety. Abrasion resistance is important because the tubing is used in proximity to abrasive surfaces, such as the deck plate and frame rail, and an unabraded hose is less likely to fail than an abraded one. Coil retention is important so that the tubing does not become slack and prone to abrasion and contamination. High temperature resistance is important because the tubing is used in proximity to exhaust stacks. Parker Hannifin believes coiled tubing is used in areas on the vehicle that are shielded by the cab from the cooling effects of wind and air flow. According to Parker Hannifin, the effect of this and the exposure to continuous heating from the truck engine and from the hot air generated by the cooling system on the truck are such that the tubing could be exposed to temperatures as high as 250 °F.

Parker Hannifin supports its argument that the oil resistance test acts as a "surrogate" for regulating other aspects of performance by referring to the industry standard for nonmetallic air brake system tubing, J844 (June 1990) published by the Society of Automotive Engineers (SAE). SAE J844 does not have an oil resistance requirement, but does require tubing to be made of one hundred percent virgin nylon. According to Parker Hannifin, the material specification obviates the need for an oil resistance requirement because nylon tubing is impervious to oil. Stated differently, Parker Hannifin claims that an oil resistance test and a material specification for nylon serve the same purpose: to ensure that superior materials are used in the manufacture of coiled tubing.

Agency Response to Rulemaking Petition

The agency granted Philatron's petition to commence a rulemaking proceeding after determining there is a reasonable possibility that the order requested would be issued at the conclusion of a rulemaking proceeding. The agency took this action because its policy is to review and revise the FMVSS's if they unnecessarily inhibit innovation.

While the agency is proposing to exclude coiled tube assemblies from the oil resistance requirement, it wished to

explore whether any safety problems may arise from the exclusion. As noted above, Parker Hannifin has stated that it believes that there would be safety problems. To aid it in reaching conclusions about the competing claims of these manufacturers, the agency invites the public to answer the questions set forth below.

Questions

In responding to a particular question, NHTSA requests that commenters refer to the question by number, and provide any data supporting their answers, and the source of such data.

1. Is coiled tubing exposed to hot oil during normal vehicle operations?

NHTSA notes that coiled assemblies sometimes end in the engine compartment of cab-over tractors. Is such tubing exposed to hot oil when used in that environment?

What temperatures are coiled brake hose assemblies exposed to in normal operation, including the time spent idling at truck stops?

2. Does the oil resistance requirement have the effect of indirectly regulating (i.e., require a level of performance relating to) the tubing's abrasion resistance, coil retention and/or heat resistance? (Standard 106 does not currently contain any requirements directly related to abrasion resistance or coil retention.) If the oil resistance requirement does have that effect, and if the agency decides to exclude coiled tube assemblies from the oil resistant requirement, should it adopt requirements concerning abrasion resistance, coil retention and heat resistance? If so, what specific requirements should it adopt?

3. Is there a "kinking" problem with nylon coiled tubing? Should some type of "anti-kinking" performance requirement be added to Standard 106?

4. Comments are requested on an additional proposed amendment. NHTSA proposes amending S7.3.6 and 7.3.10 of Standard 106. These sections set forth performance requirements for limiting the amount a hose may change in length under specified conditions (S7.3.6), and for the tensile strength of an assembly (S7.3.10). These sections exclude certain items from the requirement. S7.3.6 excludes "coiled nylon" tubes for use in an assembly that meet the requirements of Federal Highway Administration (FHWA) regulation 393.45 (49 CFR 393.45). S7.3.10 excludes "coiled nylon tube" assemblies that meet § 393.45.

NHTSA proposes to remove the word "nylon" from each of these references. The amendment is intended to remove an apparent design restriction from the standard. It is noted that a similar exclusion, in S7.3.11, does not specify nylon. NHTSA requests comments on what purpose, if any, is served by limiting the exclusions of S7.3.6 and 7.3.10 to nylon tubes. Does the nylon requirement act, in effect, as a surrogate for other performance concerns?

NHTSA proposes to consolidate the references to exclusion of coiled tubing assemblies from the requirements of S7.3.4, S7.3.6, S7.3.10 and S7.3.11 into one sentence, in S7.3. In so doing, the agency also proposes to update the references to FHWA and SAE standards incorporated therein. The current references in S7.3.6., S7.3.10 and S7.3.11 refer to § 393.45, which in turn refers to the SAE J844 standard. However, § 393.45 has been amended since reference to it was incorporated into FMVSS No. 106 (53 FR 49400), and the requirements of Standard No. 106 were thereby inadvertently changed. The new proposed wording clarifies which portion of § 393.45 was intended to be referenced.

The new proposed wording also references the most recent versions of the SAE standards covering nonmetallic brake tubing, and explicitly excludes the specification of nylon material in those standards.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. The proposed exclusion of coiled tubing assemblies from the oil resistance requirement would have a positive affect on Philatron by enabling the manufacturer to resume production and sale of its product. However, the agency does not know if and to what extent other brake hose manufacturers would also produce hose assemblies from similar materials.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Any manufacturer of brake hose or assemblies that might qualify as a small entity under the Regulatory Flexibility Act could have a slight benefit as a result of the proposed amendment because it would be permitted to produce hoses that do not meet the oil resistance requirement. However, NHTSA does not know and has no reason to believe that there are a substantial number of small entities that would undertake such production. There would be no significant impact on the cost of vehicles, and small organizations and governmental jurisdictions that purchase vehicles would not be significantly affected by the proposed amendment.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. A comment period of 30 days is provided. NHTSA is providing a relatively short comment period because it previously provided opportunity for public comment on the related issues raised by

the inconsequentiality petition and because of the economic impacts on the petitioner. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.106 [Amended]

2. S7.3 would be revised to read as follows:

S7.3 *Test requirements.* Except as specified in this paragraph, each air brake hose assembly or appropriate part thereof shall be capable of meeting any of the requirements set forth under this heading, when tested under the conditions of S11 and the applicable procedures of S8. However, a particular hose assembly or appropriate part thereof need not meet further requirements after having met the constriction requirement (S7.3.1) and then having been subjected to any one of the requirements specified in S7.3.2 through S7.3.13. A coiled nonmetallic air brake tubing assembly that meets the requirements of § 393.45(c) of this title, and either SAE J844 Jun 90, Nonmetallic Air Brake System Tubing, or SAE J1394 May 89, Metric Nonmetallic Air Brake System Tubing (except for the material specific construction requirements in paragraph 5 of those standards), is not subject to the test requirements of S7.3.4, S7.3.6, S7.3.10 and S7.3.11.

3. S7.3.6 would be revised to read as follows:

S7.3.6 *Length change.* An air brake hose shall not contract in length more than 7 percent nor elongate more than 5 percent when subjected to air pressure of 200 psi (1380 kPa) (S8.5).

4. S7.3.10 would be revised to read as follows:

S7.3.10 *Tensile strength.* An air brake hose assembly designed for use between frame and axle or between a towed and a towing vehicle shall withstand, without separation of the hose from its end fittings, a pull of 250 pounds if it is ¼ inch or less or 6 mm or less in nominal internal diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal internal diameter. An air brake hose assembly designed for use in any other application shall withstand, without separation of the hose from its end fitting, a pull of 50 pounds if it is ¼ inch or 6 mm or less in nominal internal diameter, 150 pounds if it is ⅜ or ½ inch or 10 mm to 12 mm in nominal internal diameter, or 325 pounds if it is larger than ½ inch or 12 mm in nominal internal diameter (S8.9).

5. The first sentence of S7.3.11 would be revised to read as follows:

S7.3.11 *Water absorption and tensile strength.* After immersion in distilled water for 70 hours (S8.10), an air brake hose assembly designed for use between frame and axle or between a towed and towing vehicle shall withstand, without separation of the hose from its end fittings, a pull of 250 pounds if it is ¼ inch or 6 mm or less in nominal internal diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal internal diameter. * * *

Issued on August 20, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-20392 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 920809-2209]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Preliminary determination of harvest quotas; request for comments.

SUMMARY: NMFS announces the estimated spawning biomass and preliminary determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) south of Point Reyes, California, for the 1992–93 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. The optimum yield is set at 4,900 metric tons (mt), which includes a 4,900-mt non-reduction quota, plus an unspecified amount for use as live bait. There is no reduction quota for the 1992–93 fishing season. Final determination of the harvest quotas will be announced shortly after the comment period closes.

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213. Underlying data and other information relevant to this notice (Southwest Fisheries Center Administrative Report LJ-92-24), has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS, Southwest Regional Director.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Operations, Southwest Region, NMFS, Long Beach, California, (301) 980-4036.

SUPPLEMENTARY INFORMATION: In consultation with the California

Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the Southwest Region, MNFS, (Regional Director) has estimated that the spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 167,000 mt; almost half (51 percent) of the 1991–1992 biomass estimate of 329,000 mt. The biomass estimate is derived from a stock synthesis model using spawning biomass estimated by the egg production method for calendar years 1980 to 1985, and egg production index, fish spotter data, total landings and catch data, and mean January to February sea surface temperatures.

The Regional Director has made the following preliminary determinations for the 1992–1993 fishing season by applying the formulas in the FMP and in § 662.20 of the implementing rules.

1. The total U.S. harvest quota for northern anchovy is 4,900 mt, plus an unspecified amount for use as live bait. The total U.S. harvest quota is equivalent to 70 percent of the overall optimum yield (70 percent of 7,000 mt) available for harvest by the United States and Mexico.

2. The total U.S. harvest quota for reduction purposes is zero. No reduction quota is permitted when the spawning biomass is 300,000 mt or less.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and human consumption) is 4,900 mt (as set by the Federal anchovy regulations at § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 4,202 mt. The FMP states that this amount is the maximum level of reduction plus non-reduction processing during the previous 3 years.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 4,202 mt. DAH is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero. The TALFF in the EEZ is based on the U.S. portion of the OY (4,900 mt) minus the DAH (4,202 mt), then minus that amount of the expected harvest in the Mexican fishery zone that is in excess of the amount allocated to Mexico by the FMP (78,723 mt). The expected harvest in the Mexican fishery zone is 80,832 mt, which is the largest Mexican harvest in the past 3 years. The amount allocated to Mexico by the FMP (2,100 mt) is 30 percent of the optimum yield.

A summary of the information on which this preliminary determination is based has been provided to the Pacific Fishery Management Council (Council). Consultations with the Council will continue through early August.

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–20326 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 166
Wednesday, August 26, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 21, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Cooperative State Research Service
Food Agricultural Sciences National Needs Graduate Fellowship.
Grant Program, *Application Guidelines*
Forms CSRS–701, 702, 703, 706, 707, 708, 709
Annually
Individuals or households; State or local governments; Non-profit institutions; 463 responses; 9,375 hours
Lois Davis (202) 720–7854

Extension

• Food and Nutrition Service
Supplemental to Financial Status Report—Administrative Costs in Nutrition Education and Training Program
FNS–665
Quarterly
State or local governments; responses 95; 24 hours;
Lynn Rodgers (703) 305–2048

• Forest Service
Grazing Permit Administration Forms—36 CFR 222, Subpart A and E
FS–2200–1, –2, –12, –13, –15, –16, –17, R–1–2230–5, R–2–2200–6, R–3–2200–1 and R–8–2200–23
On occasion
Farms; 4,950 responses; 1,455 hours
Janette Kaiser (202) 205–0847

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92–20394 Filed 8–25–92; 8:45 am]

BILLING CODE 3410-01-M

National Agricultural Statistics Service

Cotton Trading Rule Changes

Recent changes in the trading rules for cotton in some markets will affect the price received by farmers for cotton. In order to (1) prevent future changes in trading rules from unduly affecting the farm price, (2) retain a farm price consistent with historical determinations, and (3) maintain the farm price of cotton used to determine the deficiency rate at an equitable level, the United States Department of Agriculture (USDA) will change its definition of the price received by farmers for cotton. Based on discussions with the cotton industry and comments submitted in response to a proposed change, USDA concludes that the definition for the average farm price which most nearly achieves the above objectives is "f.o.b. warehouse."

Done in Washington, DC, this 21st day of August 1992.

Donald M. Bay,

Acting Administrator.

[FR Doc. 92–20996 Filed 8–25–92; 8:45 am]

BILLING CODE 3410-20-M

Animal and Plant Health Inspection Service

[Docket 92–143–1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the

environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

	Permit number	Permittee	Date issued	Field test location
92-164-02	Michigan State University	07-30-92	Cantaloupe plants genetically engineered to express the coat protein genes of zucchini yellow mosaic virus (ZYMV) and tobacco etch virus (TEV) for resistance to ZYMV and TEV.	Michigan.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508, (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20442 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-131-1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing a genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsvile, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when order documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
92-174-01, renewal of permit 91-346-02, issued on 02-07-92.	Pioneer Hi-Bred International, Incorporated.	07-21-92	Soybean plants genetically engineered to express methionine- and cysteine-rich seed storage proteins from Brazil nut.	Salinas, Puerto Rico.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20443 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-130-1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. THe application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of the document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 320, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-203-01	Pioneer Hi-Bred International, Incorporated.	07-21-92	Soybean plants genetically engineered to express either the enzyme 5-enol-pyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabo-lizing enzyme for tolerance to the herbicide glyphosate; or methionine- and cysteine-rich seed storage proteins from Brazil nut.	Salinas, Puerto Rico.

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20444 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-142-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-209-01 renewal of permit 91-197-01, issued on 09-24-91.	Pioneer Hi-Bred International Incorporated.	07-27-92	Corn plants genetically engineered to express a wheat germ agglutinin (WGA), for resistance to European corn borer.	Hawaii.
92-209-02	Monsanto Agricultural Company	07-27-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects, or genes for tolerance to the herbicide glyphosate, or a beta-glucuronidase (GUS) gene as a marker.	Hawaii.
92-209-03	Monsanto Agricultural Company	07-27-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects, or genes for tolerance to the herbicide glyphosate, or a beta-glucuronidase (GUS) as a marker.	Hawaii.
92-212-01	Pioneer Hi-Bred International Incorporated.	07-30-92	Corn plants genetically engineered to express the marker genes phosphinothricin acetyl transferase (PAT) and beta-glucuronidase (GUS) and a gene for male sterility.	Hawaii.
92-218-01 renewal of permit 91-042-02, issued on 04-26-91.	Auburn University	08-05-92	*Xanthomonas campestris* pv. *campestris* genetically engineered to express a bioluminescence gene as a marker.	Alabama.
92-219-01 renewal of permit 89-320-01, issued on 02-12-90.	Calgene, Incorporated	08-06-92	Tomato plants genetically engineered to express an anti-sense poly-galacturonase (PG) gene to delay ripening.	Florida.

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20445 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption of Cyclone, Flurry, Twister, and Vortex Salvage Timber Sales From Appeal, Mt. Hood National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Cyclone, Flurry, Twister, and Vortex Salvage Timber Sales in the Clackamas River Drainage on the Mt. Hood National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the January 23, 1989 Federal Register (54 FR 3342).

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Judith E. Levin, Forest Supervisor, Mt. Hood National Forest, 2955 N.W. Division St., Gresham, Oregon 97030.

SUPPLEMENTARY INFORMATION: In January of 1990 a windstorm in the Mt. Hood National Forest caused extensive damage to stands of timber in the Clackamas River Drainage. The area involved in this proposal totals approximately 440 acres and 7.2 MMBF of merchantable timber. All of the area is suitable lands for timber production.

In the spring and summer of 1990 an interdisciplinary team (IDT) surveyed much of the impacted area to assess the amount of timber volume that was blown down as a result of the storm. The IDT identified the need to salvage the timber which had fallen over in as short a time as possible for the following reasons: (1) The wood in down trees decays rapidly causing reductions in value and merchantable volume; (2) in a number of stands a majority of trees have blown down leaving the stand in an understocked condition necessitating reforestation; (3) damaging insect populations have increased in the down trees and are currently spreading to adjacent stand.

Early in 1990, the Clackamas District Ranger proposed the salvage harvest of the windthrown timber. The environmental analysis of this action began in the summer of 1990 but was delayed several times due to events surrounding the listing of the Northern Spotted Owl as a Threatened species and litigation concerning the management of the Northern Spotted Owl on National Forest System lands. After publication in planning newsletters, and contacts with individuals and State and Federal agencies, major issues were identified. These were:

1. Whether to harvest windthrown timber to reduce insect infestation and minimize loss of commercial timber value to decay?
2. Whether harvest will impact soil productivity?
3. How much down Large Woody Debris (LWD) should be left for wildlife and nutrient recycling?
4. Whether removing the down timber would effect Northern Spotted Owls or their habitat?
5. Whether Salvage activities will affect water quality and fisheries?
6. How would salvage operations be designed to provide habitat for snag dependant wildlife species?

The IDT developed five alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment (EA) which was prepared for the proposal. The

Proposed Action (Alternative C) would harvest approximately 7.2 MMBF on 440 acres. Approximately 1 mile of logging road would be constructed and approximately 0.5 miles of road would be reconstructed. There are no roadless areas involved in this proposal. Structural diversity would be maintained thru the retention of adequate quantities of LWD, wildlife trees, intact mature forest, and forage and riparian areas. This proposal has been determined to have "no effect" on the Northern Spotted Owl. The harvest areas do not contain suitable habitat for the Northern Spotted Owl and no owls were found in any of the units.

The sales and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR 217.4(a)(11) is being followed. Under this Regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Cyclone EA and the Forest Supervisor's Decision Notice for this project, I have determined that good cause exist to exempt this project decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 19, 1992.

Michael S. Edrington,

Acting Deputy Regional Forester.

[FR Doc. 92–20428 Filed 8–25–92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Bergan Fire Salvage Timber Sale From Appeal, Ochoco National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Bergan Fire Salvage Timber Sale and Other Fire Recovery Projects (hereafter referred to as the Silver Creek analysis) located on the Snow Mountain Ranger District, Ochoco National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the January 23, 1989 **Federal Register** (54 FR 3342).

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754; or James Keniston, District Ranger, Snow Mountain Ranger District, Ochoco National Forest, Hines, Oregon 97738 (503) 573–7292.

SUPPLEMENTARY INFORMATION: During August, 1990, an extensive area on the Snow Mountain Ranger District of the Ochoco National Forest in Oregon was burned by wildfire and was found to need resource restoration. Proposed projects include the recovery of National Forest System lands damaged by the wildfire, and the salvage harvest of dead and dying timber. Any further delay in the activities necessary to restore these damaged lands or remove this salvageable timber will result in unacceptable degradation of the physical and biological condition of National Forest System lands and a substantial deterioration of the merchantable fire-damaged timber. Deterioration of fire-killed and damaged timber will result in economic losses to county and United States treasuries. Further delays will also significantly increase the risk of severe forest insect and pest infestation of the affected area as well as the undamaged trees adjacent to, and within, the affected area.

The Forest Supervisor had determined through an environmental analysis, which is documented in the Silver Creek analysis final environmental impact statement (EIS), that there is good cause to expedite this project. Expediting this project is necessary for prompt rehabilitation of the fire-affected area, and for the salvage of dead and dying timber. The final EIS, which documents the expected environmental effects of the action, also documents extensive public involvement and addressed issues raised by the public.

Due to the length of time it has taken to develop an acceptable salvage and recovery program, and to properly evaluate the potential environmental effects, the time remaining for program accomplishment has become critical. Additional delay would result in further damage to area resources, and could result in a complete loss of the salvageable timber resource.

Pursuant to 36 CFR 217.4(a)(11), it is my decision as Regional Forester of the Pacific Northwest Region of the Forest Service to exempt from appeal the decision dealing with the salvage and fire recovery projects for the Silver Creek analysis final EIS. The decision to rehabilitate the area affected by the Buck Springs fire and offer salvage timber for sale in Segment 3 of the Silver Creek analysis area will not be subject to administrative appeal.

The decisions pertaining to wild and scenic river suitability determination will remain subject to appeal pursuant to 36 CFR 217.

The Buck Springs Fire burned approximately 1,243 acres of public land within the Silver Creek River corridor. A large portion of the recovery area is located within the Silver Creek roadless area. An estimated 2.68 million board feet (MMBF) of salvageable timber on an estimated 477 acres of National Forest System lands is proposed for harvest under the proposed action in the Silver Creek analysis final EIS. These lands need to be promptly rehabilitated through fire recovery projects, and timber killed or damaged beyond recovery needs to be expeditiously removed through low-impact salvage harvest.

On December 27, 1990 the Forest Supervisor of the Ochoco National Forest published a Notice of Intent to prepare an EIS for a proposal to determine the suitability of Silver Creek for wild and scenic river designation, rehabilitate burned National Forest System lands, and salvage timber killed or damaged beyond recovery by the Buck Springs Fire of 1990. Sloping was conducted by the Snow Mountain Ranger District of the Ochoco National Forest, pursuant to 40 CFR 1501.7, to determine the issues to be addressed, and for identifying the significant issues related to the specific proposed action. Key issues relating to the Silver Creek analysis were derived through scoping from letters soliciting comments, newsletters, newspaper articles, phone calls, field trips, meetings and open houses held in Burns, Oregon in February of 1991 and in Prineville, Oregon in March of 1991. The information from these sources and the scoping process that followed is documented in the final EIS and associated planning records. These documents are located at the Snow Mountain Ranger District Office in Hines, Oregon.

The Ochoco National Forest analyzed the effects of seven alternatives on the environment within and adjacent to the Silver Creek analysis area. In compliance with the National Environmental Policy Act, the analysis was documented in the Silver Creek analysis draft EIS, which was issued for public review on June 14, 1991. The Notice of Availability for the draft EIS was published in the **Federal Register** on

June 14, 1991. The Record of Decision for the final EIS will be issued in September, 1992. The analysis for this exemption is documented in the final EIS planning record files which are available at the Snow Mountain Ranger District Office in Hines, Oregon.

The analysis of the rate of deterioration of the dead and damaged timber indicates that approximately 1.82 MMBF, with an estimated stumpage value of $637,000, would be lost to insects and decay resulting from delay caused by resolving potential administrative appeals. This would result in an estimated loss of $159,250 to county governments which share in twenty-five percent of National Forest receipts. Fire recovery activities of affected resources, scheduled for implementation during the 1993 field season, would also be delayed resulting in future resource impacts. Additionally, the reforestation of an estimated 755 acres of suitable lands as a part of the recovery of the affected area would be delayed by at least one year, further reducing the opportunity for successful reforestation.

The Bergan Fire Salvage Timber Sale and other fire recovery projects are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work and to prevent delays by appeals the process according to 36 CFR Part 217 is being followed. Under this regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from national disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice, and at least 30 days after the final EIS is available to the public, the Record of Decision for the Silver Creek analysis will be signed by the Forest Supervisor, and the decisions pertaining to the salvage timber sale and other fire recovery projects will not be subject to review under 36 CFR Part 217.

Dated: August 19, 1992.

Michael S. Edrington,

Acting Deputy Regional Forester.

[FR Doc. 92-20429 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Application and Reports for Scientific Research, Public Display, and Enhancement Permits Under the Marine Mammal Protection Act (MMPA), the Fur Seal Act, and the Endangered Species Act (ESA).

Agency Form Number: None.

OMB Approval Number: 0648-0084.

Type of Request: Reinstatement of a previously approved collection.

Burden: 6,134 reporting hours, 518 recordkeeping hours.

Number of Respondents: 487 reporting respondents, 259 recordkeepers.

Avg Hours Per Respondent: 12.6 hours for reporting respondents, 2 hours for recordkeepers.

Needs and Uses: Respondents will be applicants for and holders of scientific research, public display, or enhancement permits. The MMPA and ESA prohibit the taking of marine mammals with certain exceptions. Applicants wanting authorization to take or import must provide certain information to be used as a basis for determining whether a permit should be issued. Permit holders are required to report periodically on the status of their permit.

Affected Public: State or local governments, businesses or other for-profit organizations, non-profit institutions, Federal agencies or employees, small businesses or organizations.

Frequency: On occasion, annually, recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, (202) 395-3084.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: August 20, 1992

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-20435 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-CW-F

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 23 & 24, 1992, in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. On September 23, the Executive Session will convene at 9 a.m. and adjourn at 10 a.m. The General Session will convene at 10 a.m. and adjourn at 1 p.m. The Executive Session will then convene at 2 p.m. and adjourn at 5 p.m. On September 24, the Executive Session will convene at 3 p.m. and adjourn at 5 p.m. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session September 23, 1992, 9 a.m.–10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session September 23, 1992, 10 a.m.–1 p.m.

2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Discussion of the supercomputer regulation.

Executive Session September 23, 1992, 2 p.m.–5 p.m.; September 24, 1992, 3 p.m.–5 p.m.

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate

distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: August 20, 1992.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 92-20467 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held September 24, 1992, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening remarks by the Chairwoman.
2. Presentation of papers or comments by the public.
3. Discussion of the draft Export License Application Form.
4. Discussion of the Automated Export System.
5. Status reports on EMS, GLV, and SED.
6. Industry recommendations for streamlining the Export Administration Regulations.
7. Procedure for end user checks.
8. Discussion on licensing impacts of the EPCI controls.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date of the following address: Lee Ann Carpenter, TSS/ODAS-EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: August 20, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 92-20468 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held September 18, 1992, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Report on status of U.S. implementation of Core List.
5. Status of COCOM negotiations, including Segment A proposals.
6. Consideration of technology control proposals from the Militarily Critical Technologies List.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: August 21, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 92-20472 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DT-M

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), DOC.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
King Wood Turning Co., Inc	5370 Alhambra Avenue, Los Angeles, CA 90032	07/22/92	Wood Auto Accessories (Knobs, Handles, Levers) and Light Fixtures.
Craneveyor Corporation	1524 North Portrero Avenue, South El Monte, CA 91733.	07/22/92	Crane/Hoist System for Material Handling.
Able Enterprises, Inc	1500 Jack McKay Blvd., Ennis, TX 75119	07/22/92	Van and Bus Window Frames and Mini-Blinds/Pleated Shades.
Bell Manufacturing Company, Inc	P.O. Box 1079/900 W. Wise, Bowie, TX 76230	07/22/92	Radiators and Pumping Engines.
Full Vision, Inc	P.O. Box 647, Newton, KS 67114	07/24/92	Accessories and Parts for Agricultural Tractors and Construction Equipment.
Eagle Convex Glass Specialty Company	P.O. Box 1340, 415 Tuna Street, Clarksburg, WV 26302-1340.	07/24/92	Appliance Panels, Flat Etched Glass for Computer Screens, Platters of Convexed, Edged Glass.
M.D. Machine Company, Inc	602 7th Avenue, Trafford, PA 15085	07/24/92	Machine Tooled Accessories and Parts Pressed or Cut From Metal in Semi-Automated Process.
Town and Country Research and Development, Inc.	Route 1, Box 81A, Marion, ND 58461	07/24/92	Weed Badger.
Beall Manufacturing, Inc	P.O. Box 70, East Alton, IL 62024	07/24/92	Leaf Springs.
Lyntone Belts, Inc	P.O. Box 5110, Edmond, OK 73083-5110	07/28/92	Men's and Boy's Belts, Charro and Miscellaneous Belts, and Men's Suspenders.
Gulf Coast Wire Products, Inc	P.O. Box 68, Kaplan, LA 70548	07/28/92	PVC Fluidized Wire With Plastic.
Shadowdancer, Inc	85 Olean Street, Angelica, NY 14709	07/28/92	Statuettes (Made of Tin).
Loubella Extendables, Inc	5540 Harbor Street, City of Commerce, CA 90040	08/04/92	Women's Garments: Slacks, Skirts, Blouses and Jackets.
Conneaut Leather, Inc	525 W. Adams Street, Conneaut, OH 44030	08/04/92	Leather for Upholstery, Desktops, and Bookbinding.
Comptec, Incorporated	7837 Custer School Road, Custer, WA 98240	08/04/92	Plastic Components and Keytops for Keyboards, Phones, Calculators or Computer Keyboards.
American Coating Technology, Inc	186 County Road U, River Falls, WI 54022	08/07/92	Coated Paper for Pressure Sensitive Applications and Scrap Paper.
Coin Concept's, Inc	16 Edgeboro Road, Unit 4, E. Brunswick, NJ 08816.	08/07/92	Coin or Token Operated Games of the Types Used in Arcades, Made of Metal and Wood.
Commercial Doors, Inc	230 East 16th Street, Paterson, NJ 07524	08/07/92	Hollow Metal Doors and Frames.
Eletro Sprayer Systems, Inc	1090 Fargo Avenue, Elk Grove Village, IL 60007	08/07/92	Machines for Uses as Accessories to Printing Presses.
M.S. Company, Inc	61 School Street, Attleboro, MA 02703	08/07/92	Karat Gold Findings, Chains and Sterling Silver Chains.
Trio Manufacturing Company	2 N. Jackson St., Drawer 270, Forsyth, GA 31029	08/07/92	Yarn of Cotton Fiber, Twine of Cotton Fiber and Yarn of Cotton and Man-Made Fiber.
M.A.P. Acquisitions	5144 West McKinley, Phoenix, AZ 85043	08/07/92	Metal Electronic Components for Computers, Aircraft Body Parts and Auto Parts.
Steffes & Son Manufacturing, Inc	Hwy #22 S., Dickinson, ND 58601	08/10/92	Storage Bins.
DeVlieg-Bullard, Inc	3100 W. End Ave., Suite 880, Nashville, TN 37203	08/13/92	Machine Tools.
Griffin Industries, Inc	43900 Highway 13, Meeker, CO 81641	08/13/92	Reamers of High Speed Steel and Drills of High Speed Steel.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business on the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 19, 1992.

Kathleen W. Lawrence,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 92-20473 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-24-M

Foreign-Trade Zones Board

[Docket 63-91]

Foreign-Trade Zone 61, San Juan, Puerto Rico; Application for Subzone, Searle Pharmaceutical Plant, Caguas, Puerto Rico; Amendment to Application

Notice is hereby given that the application submitted by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical products manufacturing facilities of Searle & Company (Searle) (subsidiary of Monsanto Co.) in Caguas, Puerto Rico (56 FR 56187, 11/1/91) has been amended to modify the boundaries of the proposed site and to include additional finished products within the scope of its manufacturing request.

The original application listed the following products that would be manufactured under zone procedures: cardiovascular, antihistamine, antiasthmatic, hormonal, antimicrobial, anticholinergic, antipsychotic, gastrointestinal, and antidiarrheal products as well as anabolic steroids. The amendment adds the following to the list of products that could be manufactured under zone procedures: Fertility, antiinfective, antibacterial, antitumor, immunologic, antiinflammatory, anti-arthritic, respiratory, alimentary, analgesic, anti-allergic, chemotherapeutic, anesthetic, and vitamin products, as well as drugs affecting the central nervous system, including anticonvulsants, hypnotics and sedatives.

The amendment also modifies the description of the site to include within the proposed subzone boundaries a local road that the Municipality of Caguas has transferred to the company in exchange for other property. The application remains otherwise unchanged.

The comment period is reopened until October 13, 1992.

Dated: August 20, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92-20475 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 28-92]

Foreign-Trade Zone 84, Houston, TX; Application for Subzone, Shell Oil Co., Refinery and Petrochemical Complex; Harris County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the "Deer Park" oil refinery and petrochemical complex of Shell Oil Company, located in Harris County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 14, 1992.

The refinery complex consists of 2 sites located north of the town of Deer Park and 7 miles east of Houston, alongside the Houston Ship Channel: *Site 1* (1,427 acres)—225,000 barrels per day refinery and petrochemical manufacturing complex, including barge and tanker loading and unloading facilities, on the south side of the Channel; and, *Site 2*—three crude oil storage tanks (total 732,000 barrel capacity) and pipelines leading to and from the tanks, leased from the Houston Fuel Oil Terminal Company, 2 miles northeast of the refinery complex, on the north side of the Channel. The terminals, storage facilities and pipelines operate as an integral part of the refinery.

The refinery (2,400 employees) is used to produce gasoline, fuel oil, jet fuels, middle distillates, lube oil, and naptha. Various chemical products include epoxy resins, Bis-Phenol-A, thermoplastic rubbers, ethylene, propylene, benzene, butadiene, and glycols. Approximately one-third of the refinery inputs (crude oil, feedstocks, and blendstocks) are sourced abroad. Certain chemical feedstocks such as syngas, sulphuric acid, propylene, methyl mercaptan, and anhydrous hydrochloride may also be sourced abroad in the future. Some 8 percent of the products are exported.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to choose the finished-product duty rate in certain circumstances. For example, the company plans to choose the zero duty rate that applies to certain petrochemical products, such as ethylene, propylene, MEP (a methane/ ethane/propane/ hydrogen mix), butalene, butadiene, benzene, propane, asphalt, and petroleum coke. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.)

MTBE (methyl tertiary butyl ether) is one of the blendstocks sourced from abroad. On MTBE, which is blended with gasoline at the refinery and then sold in the U.S., Shell is seeking to apply the finished gasoline duty rate (1.25 cents/gallon) to the MTBE (duty rate—5.6%). The components of MTBE are butylene (a byproduct of refining at the Shell plant) and methanol, some of which may be sourced abroad (duty rate—18%).

Foreign merchandise would also be exempt from state and local *ad valorem* taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 26, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 9, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, 515 Rusk Street, Houston, Texas 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: August 21, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92-20474 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with July anniversary dates. In accordance with the Commerce

Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with July anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than July 31, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Brazil:	
Silicon Metal A–351–806	
Companhia Brasileira Carbureto de Calcio, Companhia Ferroligas Minas Gerais Minasligas, Eletroila, S.A., Rima Eletrometalurgia S.A.	3/29/91–6/30/92
Industrial Nitrocellulose A–351–804	
Companhia Nitro Quimica Brasileira	7/1/91–6/30/92
Japan:	
Polyethylene Terephthalate Film, Sheet, and Strip * A–588–814	
Diafoil Co., Ltd. Teijin, Ltd.	11/30/90–5/31/92
Countervailing duty proceedings:	
None	

* Toray Plastics (America), Inc. (Toray America) has requested that the Department conduct an administrative review of two Japanese producers, Teijin, Ltd. and Diafoil Co., Ltd., under § 353.22(a)(1) of the Department's regulations. Both Teijin and Diafoil have questioned Toray America's "interested party" status as a U.S. producer under § 353.2(k)(3). The Department is proceeding with the review of Teijin and Diafoil, but intends to resolve the issue of Toray America's interested party status promptly. Interested parties should submit comments on this issue within ten days of the publication of this notice.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) and section 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: August 20, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–20476 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Texas Habitat Protection Advisory Panel (Panel) on September 3, 1992, from 9 a.m. until 3 p.m., at the Holiday Inn, Hobby Airport, 9100 Gulf Freeway, Houston, TX; telephone: 713–943–7979.

The Panel will discuss the Houston-Galveston Ship Channel Project, the Mesquite Bay-Oil Well Mitigation Project with Dredged Material, the West Galveston Bay Bank Stabilization and Berm Rebuilding Project, and the Texas Coastal Management Plan. The Panel will also hear an update of issues from previous panel meetings including the Channel to East Matagorda Bay, Breaux Bill Activities, and Section 216 Studies.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 20, 1992.

Ricahrd H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20456 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Change in Public Meeting Date and Location

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and location of a public meeting of the North Pacific Fishery Management Council's Gulf of Alaska Rockfish Committee, originally published in the **Federal Register** at 57 FR 36385, on August 13, 1992, has been rescheduled. The changes are noted below; all other information originally published at 57 FR 36385, remains unchanged.

CHANGE: September 14, 1992, meeting in Juneau, Alaska.

TO: September 20–21, 1992, meeting in Anchorage, Alaska, beginning at 10:30 a.m. on September 20.

CHANGE LOCATION OF MEETING TO: The Portage Room, Anchorage Hilton Hotel, Anchorage, Alaska.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: August 20, 1992.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 20445 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–22–M

International Trade Administration

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On June 10, 1991, the Department of Commerce published in the **Federal Register** the preliminary results of an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review covers shipments of pipe and tube to the United States by one exporter during the period March 1, 1988 through February 28, 1989. We preliminarily found that dumping margins exist with respect to this exporter.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners and the respondent. Based on our analysis of comments received, the dumping margin has changed from that presented in the preliminary results.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1991, the Department of Commerce ("the Department") published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand for the period March 1, 1988 through February 28, 1989 (56 FR 26648). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes with an outside diameter of 0.375 inch or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States, Annotated ("TSUSA"). Pipe and tube is now classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090 of the Harmonized Tariff Schedule ("HTS"). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

This review covers shipments made by Saha Thai Steel Pipe Co., Ltd. ("Saha Thai") from Thailand to the United States during the period March 1, 1988 through February 28, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of the review. We received timely comments from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual members, and Saha Tahai.

Comment 1: Petitioners argue that the Department erred in accepting Saha Thai's calculation of production costs, which include revenues from sales of flat bar made from coil scrap. Citing our notice of Final Determination of Sales at Less than Fair Value: Titanium Sponge from Japan (48 FR 38687—October 1, 1984), where similar situation occurred, petitioners claim that revenues from sales of flat bar should be excluded from Saha Thai's production costs because (a) flat bar is not a by-product of the manufacturer of pipe and tube, but rather is an intermediate product, since it is manufactured on separate machinery not used in producing pipe and tube, (b) the quantity of production of flat bar is decided by management independent from the production of pipe and tube, and (c) the production of flat bar is not an unavoidable consequence of manufacturing pipe and tube (Saha Thai could, like others, simply dispose of the steel scrap on the open market). Petitioners assert, therefore, that the Department should treat the scrap transferred to Saha Thai's flat-bar department as sold to that department and substitute this revenues from sales of flat bar in Saha Thai's production-cost calculations.

Saha Thai replies that (a) flat bar is produced on a machine directly adjacent to the slitting machine used in producing pipe and tube, (b) the production of flat bar is determined entirely by the production of pipe and tube, and (c) the excess material used for flat bar is an unavoidable consequence of slitting narrow steel coils for the production of pipe and tube.

Department's Position: We agree with petitioners. Flat bar is not a by-product of the manufacture of pipe and tube; rather, it is the product of further processing of the steel scrap resulting from the manufacture of pipe and tube. Therefore, the revenues from the scrap used in the production of flat bar should not be based on the price of the finished flat bar, but rather on the revenues from the sale of scrap to unrelated purchasers. We have adjusted Saha Thai's production costs accordingly, substituting for finished flat-bar revenues the revenues from scrap sales to unrelated purchasers in Saha Thai's production-cost calculations.

Comment 2: Petitioners assert that the Department should have calculated the amount of coil in one ton of galvanized threaded and coupled ("GTC") pipe by deducting the weight of the coupling and zinc in one ton of GTC pipe. Instead, petitioners claim, the Department unquestioningly used the production costs submitted by Sana Thai, in which Saha Thai deducted from one ton of steel the entire weight of the zinc consumed in one ton of pipe, rather than the amount of zinc actually on the pipe.

Petitioners point out that a substantial portion of the zinc consumed in the production of galvanized pipe does not end up as part of the coating on the pipe. Saha Thai admitted as much, petitioners suggest, when it deducted zinc dross and ash from its zinc costs. Petitioners argue, however, that Saha Thai has ignored the excess zinc which, during the finishing process, is blown off both the outside and the inside of the pipe by means of compressed air or steam, and which is known in the industry as "coarse dust" or "fine dust." Typically, petitioners claim, this dust constitutes a higher amount of zinc scrap than does dross and ash.

During the verification conducted as part of the preceding administrative review, the Department only verified Saha Thai's total zinc usage and dross and ash collection. Petitioners claim that the zinc usage rates Saha Thai reported for the current review period are not credible because they would have resulted in inferior quality pipe. Therefore, petitioners request that the Department reject Saha Thai's zinc application rates and use, as best information otherwise available pursuant to section 776(c) of the Act, the standard use of zinc on GTC pipe manufactured to British Standard ("BS") and American Society for Testing Materials ("ASTM") specifications in order to determine the weight and cost of coil.

Saha Thai replies that, in calculating the coil cost for one ton of GTC pipe, it made an adjustment to reflect the fact that there is in one ton of GTC pipe a certain amount of weight associated with the zinc actually on the pipe and the weight of the couplings. Saha Thai denies petitioners' assertion that it deducted the entire weight of the zinc consumed in the production of one ton of pipe rather than the amount of zinc actually on the pipe. Saha Thai states that it did not include the weight of zinc dross and ash consumed in the production of GTC pipe in its coil weight adjustment. With respect to petitioners' assertions that Saha Thai failed to account for excess zinc or "dust" blown off the pipe during the galvanizing process, Saha Thai argues that this claim is based on factual information untimely submitted after the publication of the preliminary results. Saha Thai requests that this information be stricken from the record, in accordance with § 353.31(a) of the Commerce Department's regulations (19 CFR 353.31(a)).

Department's Position

The issue of whether to use, in calculating coil costs for GTC pipe, the actual consumption of zinc used in the galvanizing process or the amount of zinc actually on the pipe presented the Department with two options.

The first option was to base the calculation on standard zinc usage, which is the minimum coating level required in the industry specification. This approach, while it reflects the

industry's requirements, does not reflect the quantity of zinc actually on the pipe, because in practice pipe producers always apply a zinc coating heavier than what the specifications call for. The second option was to base the calculation on zinc consumption after deduction of dross and ash.

Although we agree with petitioners that the latter option does not take into account fine dust blown off the pipe, petitioners did not raise this issue until their case brief, filed well after the publication of the preliminary results. In accordance with § 353.31(a)(1)(ii) of Commerce Regulations (19 CFR 353.31(a)), the Department declined to take into account new factual information submitted at such a late date in the proceeding. Accordingly, we removed petitioners' case brief from the official record of this proceeding on August 6, 1991 and asked petitioners to resubmit their case brief after deletion of this new and untimely factual information. Based on the factual information which is on the record of this proceeding, the Department cannot possibly measure, or even approximate, the amount of fine dust blown off the pipe.

Under the circumstances, the Department believes the respondent's methodology for calculating actual zinc usage is the most reasonable approach. Moreover, we used this methodology in calculating coil costs in the prior administrative review. Therefore, we used it again for purposes of the final results of this administrative review.

Comment 3: Petitioners contend that the Department erred in applying Saha Thai's production costs for British Standard Medium ("BS–M") pipe to pipe meeting British Standard Light ("BS–L"), British Standard Heavy ("BS–H"), and British Standard Special ("BS–S") specifications. Petitioners claim that the forming and galvanizing costs of BS–S, BS–L, and BS–H pipe differ from those of BS–M pipe. Petitioners have calculated differences in production costs between those grades of pipe on the basis of information supplied by Saha Thai, and request that the Department adjust production costs to account for those differences. With regard to those types of pipe or time periods for which no cost data was available, petitioners have suggested that we use the most contemporaneous BS–M pipe costs as the best information otherwise available.

Saha Thai points out that petitioners erred in recalculating the cost of coils used in producing BS–H, BS–L, and BS–S pipe. Saha Thai requests that, should the Department choose to recalculate Saha Thai's costs for BS–S, BS–L, BS–M, and BS–H pipe, it should do so using actual cost data provided in Saha Thai's response. Saha Thai notes that it provided no cost data for BS–H and BS–L pipe in certain quarters because it did not manufacture any such pipe during those quarters. In those cases, Saha Thai urges the Department to use the cost data provided for earlier quarters. Where no cost data is available for a particular kind of pipe, *e.g.*, BS–S pipe, Saha Thai concurs with petitioners that BS–M costs should be used as a substitute.

Department's Position: We agree with petitioners that an adjustment to production costs is warranted in order to reflect differences in labor, factory overhead, and zinc costs between BS–L, BS–H, and BS–S pipe on the one hand, and BS–M pipe on the other hand. We do agree, however, with Saha Thai that petitioners' methodology and calculations are erroneous. We recalculated production cost differences between the grades of pipe noted above based on Saha Thai's own information. In those where no cost data was available for particular types of pipe or for particular time periods, we used the most contemporaneous BS–M pipe costs as the best information otherwise available, as petitioners have suggested and respondent has concurred.

Comment 4: Petitioners argue that the Department erred in comparing galvanized fence tubing ("GFT") sold by Saha Thai in the United States to BS–S or BS–L pipe sold in the home market, because there are significant differences in wall thickness and galvanized surface area between BS–S or BS–L pipe and GFT. Petitioners claim the Department should have recalculated production costs for GFT and adjusted those costs to account for differences in the quantity of zinc required to coat GFT and either BS–S or BS–L pipe.

Department's Position: We agree with petitioners that comparing GFT sold in the United States to BS–L or BS–S sold in the home market was incorrect, since BS–M pipe is more similar to GFT than either BS–L or BS–S pipe. We disagree, however, with petitioners' view that it is necessary to calculate differences in production costs between GFT and BS–S or BS–L pipe, since, in the prior segment of this proceeding, petitioners advocated comparing GFT to BS–M pipe, and making an adjustment to foreign market value to account for differences in physical characteristics ("diffmers") between GFT and BS–M pipe. In this segment of the proceeding, responding to petitioners' previously expressed concerns, Saha Thai submitted all the data required to adjust for diffmers between GFT and BS–M pipe. Therefore, we compared GFT sold in the United States to BS–M pipe sold in the home market, using the diffmers submitted by Saha Thai, in calculating the final results of this administrative review.

Comment 5: Petitioners argue that the Department erred in calculating the indirect tax liability that the exported merchandise would have incurred, had it been taxed, by applying the rate of business tax in Thailand to the c. & f. or c.i.f. packed value of the merchandise sold in the United States, since merchandise sold in the home market does not normally incur ocean freight and marine insurance charges. Therefore, petitioners claim, the Department should have calculated the business tax after, rather than before, deducting ocean freight and marine insurance from United States price.

Saha Thai contends that the Department acted properly since the business tax is calculated in Thailand on gross sales receipts, including revenues related to transportation services provided by the seller. Saha Thai argues that the statute directs the Department to adjust United States price for the amount of tax that would have been charged on U.S. sales had they not been exempted from taxation by reason of exportation, and not for the amount of tax borne by home-market sales or by U.S. sales adjusted to some basis equivalent to that of home-market sales.

Saha Thai argues further that, should the Department adopt petitioners' suggestion, a parallel modification in the calculation of foreign market value is necessary, since the same amount of business tax is added to both U.S. price and foreign market value. Saha Thai believes that foreign market value would artificially be inflated if this change were not made.

Department's Position: We agree with respondent. Section 772(d)(1)(C) of the Act provides that the Department must increase United States price by:

> [T]he amount of any taxes imposed in the country of exportation directly upon the exported merchandise which have not been collected by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation.

The amount to be added to United States price is the amount of business tax that the government of Thailand would have assessed against the exported goods had they been subject to the tax. Because Thailand does not, in practice, assess a business tax against exports, this inquiry is unavoidably

hypothetical. The most reasonable assumption we can make in imputing a business unavoidably hypothetical. The most reasonable assumption we can make in imputing a business tax on U.S. sales, however, is that the government of Thailand would calculate such a tax using a tax base equivalent to that used for calculating the business tax on goods sold in the home market. Therefore, we essentially attempt to apply the home-market tax law to the export sales.

To the extent possible, we attempt to calculate the U.S. tax base in the manner most comparable to the tax base for home-market sales, including in the U.S. tax base the same level of expenses (rather than the same expenses) included in the home market tax base. Therefore, if the foreign law charges the business tax against an ex-factory price, we use a U.S. ex-factory price as the U.S. tax base. Conversely, if the home-market tax is charged against a delivered price, we should use a delivered U.S. price as the U.S. tax base. Such a U.S. tax base would include home-market inland movement charges, ocean freight, the value added to the merchandise in the United States, and so forth. Once the U.S. tax base is determined, we multiply it by the home-market tax rate and add the product to United States price. We then make a circumstance-of-sale adjustment to foreign market value for differences between the home-market and the U.S. business tax.

In the instant case, in accordance with the Department's policy, we have calculated the business tax on U.S. sales based on the c. & f. or f.o.b. value of the imported merchandise, as appropriate, because the Thai business tax is calculated on gross sales receipts.

We agree with Saha Thai that the amount of business tax added to foreign market value should be calculated on the same basis as that added to U.S. price, because otherwise foreign market value would artificially be inflated.

Comment 6: Petitioners claim that the retroactive application to ongoing administrative reviews of the Department's new policy of calculating only one duty deposit rate for "all other" shippers, that rate being equal to the highest rate for any individual shipper in the most recently completed segment of a proceeding, is improper, since it materially affects the rights of parties without their knowledge and without their having had an opportunity to comment on this change.

Since this policy change results, in the instant case, in a significant lowering of the "all other" duty deposit rate, petitioners allege that the decision of interested parties to request or refrain from requesting an administrative review would have been different had they known that the policy was about to change. Petitioners speculate that this new policy, if maintained, might lead to abusive manipulation by respondents of the administrative review process, as it encourages respondents to coordinate individual responses in each segment of a proceeding and to take a chance on receiving the rate assigned to the individual respondent with the highest margin. Alternatively, petitioners suggest, respondents may request unnecessary reviews of low-margin producers in order to seek a second, third, or fourth opportunity to achieve lower "all other" rates.

For these reasons, petitioners claim, petitioners will now have an incentive to include in their review requests high-margin named respondents and other producers not likely to respond, thereby compelling the Department to resort to the best information otherwise available. Because this greater focus on individual firms is likely to strain the Department's already limited resources, petitioners suggest that the Department revert to its previous policy of calculating one "all other" duty deposit rate for producers that were shipping at the time of the original investigation and another duty deposit rate for new shippers based on the weighted-average duty deposit rate calculated for all respondents in the most recent segment of a proceeding.

Saha Thai takes no position on this policy change, except to suggest that the Department clarify its policy and specify whether the "all other" rate is a liquidation and cash deposit rate or a cash deposit rate only. Saha Thai also suggests that the Department clarify to which producers/exporters the "all other" rate applies.

Department's Position: We disagree with petitioners that the Department's recent change in practice concerning the calculation of "all other" and "new shippers" rates in administrative reviews in any way denied interested parties the opportunity to comment on this change in practice. We also disagree that the new practice will enable petitioners or respondents to manipulate the administrative review process.

Prior to March 8, 1991, the Department's practice in administrative reviews was to assign a "new shippers" rate for deposit of estimated antidumping duties by those firms who began to export to the United States after the last day of the period reviewed, based on the highest duty deposit rate calculated (*i.e.*, not based on best information otherwise available, or "BIA") for any respondent in the most recent segment of a proceeding. The U.S. Customs Service informed the Department that it did not have the means to determine when a given exporter's first shipment occurred. Therefore, the previous practice could not be implemented and the Department needed to change it. Our new practice is to assign one rate to all exporters not having an individual rate. This rate is equal to the highest rate for any firm in the administrative review, other than those receiving a rate based entire on BIA.

There is no reference in the statute or regulations concerning the method of calculating an "all other" or "new shippers" rate. This practice had simply evolved through the publication of notices and is an interpretive rule which is not subject to the notice and comment requirements of the Administrative Procedures Act [*see Timken Co.* v. *United States*, 673 F. Supp. 495,514 (Ct. Int'l Trade 1987)]. Therefore, the Department was not required to publish a notice of proposed rulemaking. Nevertheless, we did provide an opportunity for interested parties to comment on this change in practice through the normal comment procedure following the publication of the notice of preliminary results.

Petitioners claim that the current policy may lead to abusive manipulation of the administrative review process through selective request for review and/or respondents coordinating questionnaire responses. We believe this is extremely unlikely since the "all other" rate applies only to producers or exporters, whether or not they are new shippers, who have never received an individual rate, either in the original investigation or in any previous review. All major producers or exporters are likely to have individual rates, and petitioners are free to request reviews of any other exporters. Further, the Department's decision to initiate an administrative review is based solely on a timely request made pursuant to § 353.22 of the Department's Regulations (19 CFR 353.22). The intent or motivation behind the request is not relevant to the initiation of an administrative review. This practice also does not change the responsibility of respondents to provide the Department with accurate and timely information. If respondents fail to provide information, or provide inaccurate or incomplete information, the Department will assign a duty deposit rate based on BIA.

For administrative reasons, the Department does not have the option of reverting to the previous practice of

assigning a separate "new shippers" rate. In response to the issue raised by Saha Thai, the new "all other" rate is for cash deposit purposes only.

Comment 7: Saha Thai argues that the Department acted improperly in denying the upward adjustment it claimed to purchase price, pursuant to section 772(d)(1)(D) of the Act, in the amount of estimated countervailing duties collected upon entry of the subject merchandise in the United States.

Petitioners support the Department's position that no adjustment can be made to United States price for countervailing duties until after those duties have been finally assessed. Petitioners point out that the Department's interpretation has been upheld by the Court of International Trade in several decisions, notably *Serampore Industries Pvt. Ltd. v. United States* (C.I.T. 1987, 675 F. Supp. 1345).

Department's Position: We agree with petitioners that such an adjustment can only be made to offset countervailing duties imposed, *i.e.*, assessed at the time of liquidation (and not to offset a cash deposit for estimated countervailing duties). Because the Department published a notice of "Final Results of Countervailing Duty Administrative Review" with respect to the subject merchandise on October 9, 1991 in the **Federal Register** (56 FR 50852), we have made an upward adjustment to purchase price to offset countervailing duties imposed as a result of that notice, in accordance with section 772(d)(1)(D) of the Act.

Comment 8: Saha Thai contends that the Department should base the upward adjustment to purchase price for indirect tax rebates on exported merchandise on that portion of the rebate found not to have been excessive in the most recent administrative review of the companion countervailing duty order, rather than on that portion of the rebate found not to have been excessive in the original investigation.

Department's Position: We agree with respondent. We used the portion of the indirect tax rebate found not to have been excessive in the original investigation for purposes of the preliminary notice only because the final results of the countervailing duty administrative review had not yet been published. In the interval, however, on October 9, 1991, the Department published in the **Federal Register** a notice of "Final Results of Countervailing Duty Administrative Review" with respect to the subject merchandise and covering the calendar 1988 review period (56 FR 50852). Therefore, as Saha Thai suggested, we have based the upward adjustment to purchase price for indirect tax rebates on exported merchandise on that portion of the rebate found not to have been excessive in the 1988 review.

Comment 9: Saha Thai asks that the Department base the upward adjustment to purchase price for both indirect taxes rebated and countervailing duties imposed on the *preliminary* results of the most recent countervailing duty administrative review, which covers the calendar year 1988.

Petitioners argue that these adjustments should be based on the *final* results of the most recently *completed* countervailing duty administrative review, which covers the calendar year 1987. Unless the 1988 countervailing duty administrative review is completed before the Department's final determination in this review, the Department should base these adjustments on the final results of the 1987 review.

Department's Position: On October 9, 1991, the Department published in the **Federal Register** its final results of the countervailing duty administrative review for 1988 [*Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Countervailing Duty Administrative Review* (56 FR 50852)].

Therefore, we based the upward adjustments to purchase price for both indirect taxes rebated and countervailing duties on the final results of the 1988 administrative review.

Comment 10: Saha Thai argues that the Department acted improperly in comparing the 216 U.S. sales observations for which there were no matching contemporaneous home-market sales ("sales out of time and space") to a foreign market value based on the weighted-average value of all home-market sales during the review period of the relevant product-comparison group. Respondent claims that this methodology unjustly distorts dumping margins because production costs and prices increased steadily and substantially during the period of review. Saha Thai contends that the Department should calculate foreign market value for sales "out of time and space" by comparing such sales with home-market sales of the same grade in the closest size range that were made within the relevant contemporaneous time frame.

Petitioners support the Department's methodology and point out that all of the world's economies are experiencing inflation, to a greater or lesser extent. A respondent's production costs will also always be higher at the end of a review period than at the beginning. Furthermore, the cost increases experienced by Saha Thai during the review period were not nearly of the same magnitude as the five percent or more monthly price and cost increases for which the Department traditionally makes an adjustment in cases involving hyper-inflationary economies. Therefore, petitioners assert, it is no more unjust to use a weighted-average price for the entire review period than to use a weighted-average cost of production in cases involving moderately inflationary economies.

Department's Position: We agree with respondent. The Department has implemented its 90-day backward/60-day forward guideline in order to fulfill the statutory requirement in section 773(a)(1) of the Act that foreign market value be based on the home-market price of such or similar merchandise at the time such merchandise is sold in the United States (emphasis added). [See, *e.g.*, Final Results of Antidumping Duty Administrative Review; Certain Values and Connections, of Brass, for Use in Fire Protection Systems from Italy (56 FR 5388; February 11, 1991), comment 4; Final Results of Antidumping Duty Administrative Review; Certain Iron Construction Castings from Brazil (55 FR 26238; June 27, 1990), comment 15; Final Results of Antidumping Duty Administrative Review; Brass Sheet and Strip from the Republic of Korea (54 FR 33257; August 14, 1989), comment 3.] Therefore, for purposes of these final results, and in order to adhere to the principle of contemporaneity, we have followed our normal practice of comparing those U.S. sales observations for which there were no contemporaneous, matching home-market sales with contemporaneous sales of the next most similar merchandise in the home-market, and made the appropriate adjustment for differences in the physical characteristics in the merchandise based on information submitted by Saha Thai.

Comment 11: Saha Thai claims that the Department applied an incorrect diffmer adjustment to 1¼-inch black threaded-and-coupled pipe sold in the United States in the first quarter of 1988. Saha Thai requests that the Department correct this mistake in the final results of the administrative review.

Department's Position: We agree with respondent and have corrected this typographical error in our final calculations.

Comment 12: Saha Thai claims that the Department applied an incorrect diffmer for threading and coupling in observations 457, 2014, 2120, and 2121 of

the transaction margin data set. Saha Thai requests that the Department correct this error in the final results of the administrative review.

Department's Position: We agree with respondent, and have corrected this programming error in our final calculations.

Comment 13: Saha Thai states that it made a clerical error in reporting the tonnage and gross unit price for sales observation 422 in its home-market sales listing. Since this error distorted the foreign market value for observation 40 of the transaction margin data set and for all sales falling under home-market group 27, Saha Thai requests that the Department correct this error in its final calculations.

While not disputing that a clerical error occurred, petitioners argue that Saha Thai has inappropriately rounded upward the weight per piece of the product, resulting in a lower unit price and a lower margin than would otherwise be the case. Since Saha Thai rounded off the standard per-piece weights throughout the sales listing, thereby affecting the margin calculations, petitioners request that the Department multiply the number of pieces in each home-market sale observation by the standard length of 6 meters per piece, and then by the theoretical weight per meter listed in the questionnaire response. The resulting figure, unrounded, should be divided into the gross unit sale price to obtain a valid per-ton home-market sale price.

Department's Position: We cross-checked respondent's claim with other contemporaneous transactions of the same merchandise and agree that a keypunch error was made when the tape was being prepared. We have, therefore, corrected this error in our final calculations, but we calculated the home-market sale price using the weight calculation advocated by petitioners because Saha Thai's rounding does, in fact, result in an artificially lower unit price.

Final Results of the Review

After analysis of the comments received, we determine that the following weighted-average margin exists for the period March 1, 1988 through February 28, 1989:

Manufacturer/producer/exporter	Margin (percent)
Saha Thai	0.45

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) Because Saha Thai's dumping margin is de minimis, the Customs Service shall waive the deposit requirement for all entries of the subject merchandise from that producer during the review period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this administrative review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate shall be that established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be zero. Pursuant to the application of our rule regarding de minimis margins, this rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on the best information otherwise available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with § 353.34(d) of the Commerce Department's regulations (19 CFR 353.34(d)). Failure to comply is a violation of the APO. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: August 18, 1992.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20351 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

August 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340 and 617 are being increased, variously, for swing and carryforward. The limit for Category 607, the donor category for the swing being applied, is being reduced in a separate directive. As a result of the increases, the limits for Categories 340 and 617, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 21, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 28, 1992, you are directed to amend further the directive dated November 22, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
340	826,219 dozen of which not more than 424,640 dozen shall be in Category 340–Z [2].
617	16,115,482 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–20469 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in China

August 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 21, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 21, 1992, you are directed to amend further the directive dated November 22, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
218	11,093,315 square meters.
314	47,450,041 square meters.
334	307,902 dozen.
338/339	2,399,014 dozen of which not more than 1,809,096 dozen shall be in Categories 338–S/339–S [2].
359–C [3]	529,244 kilograms.
607	2,245,095 kilograms.
835	120,490 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–20470 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

August 20, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 341 is being increased by application of swing and special shift, reducing the limits for Categories 641 and 647/648.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 27, 1992, you are directed to amend further the directive dated January 13, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
341	3,485,437 dozen of which not more than 1,935,095 dozen shall be in Category 341–Y [2].
641	891,180 dozen.
647/648	407,277 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.
[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–20478 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

August 20, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58369, published on November 19, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and Memorandum of Understanding dated October 12, 1991, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend further the directive dated November 13, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement, as amended, between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
218, 219, 220, 225–227, 313–315, 317, 326 and 613/614/615/617, as a group.	77,585,976 square meters equivalent.
Sublevels within the group	
218	4,987,670 square meters.
219	24,162,490 square meters.
220	24,162,490 square meters.
225	24,162,490 square meters.
226	24,162,490 square meters.
227	24,162,490 square meters.
313	28,817,649 square meters.
314	31,034,391 square meters.
315	24,162,490 square meters.
317	24,162,490 sqaure meters.
326	3,325,113 square meters.
613/614/615/617	24,162,490 square meters.

Category	Adjusted twelve-month limit [1]
Other specific limits	
237	299,166 dozen.
300/301	1,050,519 kilograms.
331/631	1,618,594 dozen pairs.
333/334/335/835	185,680 dozen of which not more than 92,839 dozen each shall be in Categories 333, 334, 335 and 835.
336/636	324,774 dozen.
338/339	701,788 dozen.
340/640	1,084,279 dozen.
341/641	1,349,257 dozen of which not more than 481,348 dozen shall be in Category 341.
342/642/842	337,735 dozen.
345	123,926 dozen.
347/348	329,735 dozen.
351/651	189,693 dozen.
369-S [2]	271,509 kilograms.
435	15,995 dozen.
445/446	32,336 dozen.
604	1,080,610 kilograms.
634/635	595,698 dozen of which not more than 259,950 dozen shall be in Category 635.
638/639	296,995 dozen.
647/648	1,263,050 dozen.
Group II	
201, 222-224, 229, 239, 330, 332, 349, 350, 352-354, 359-362, 369-O [3], 400-434, 436, 438-O [4], 439, 440, 443, 444, 447, 448, 459, 464-469, 600-603, 606, 607, 611, 618-622, 624-630, 632, 633, 643, 644, 649, 650, 652-654, 659, 665-670, 831-834, 836, 838, 839, 840 and 843-859, as a group.	35,622,623 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 369-S: only HTS number 6307.10.2005.

[3] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

[4] Category 438-O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0023.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20477 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Survey of Pool Cover Industry for Conformance With Labeling Provisions of Voluntary Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of manufacturers of covers for swimming pools, spas, and hot tubs. The purpose of this survey is to determine the extent of conformance with the labeling provisions of a voluntary standard published by ASTM designated "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs, ASTM F 1346–91." The requested expiration date is March 15, 1993.

Since 1973, the Commission has received 86 reports of drownings associated with pool, spa, and hot tub covers in which the accident victim was five years of age or younger. During the years 1988 through 1991, members of the Commission staff participated in the development of a voluntary standard to address risk of drowning associated with pool, spa, and hot tub covers. The voluntary standard contains performance requirements for safety covers, and labeling requirements for all covers for swimming pools, spas, and hot tubs.

Provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2056) direct the Commission to monitor industry conformance with voluntary standards which were developed with the participation of the Commission. In its Operating Plan for Fiscal Year 1992, the Commission included a project for monitoring compliance with the labeling provisions of the voluntary standard for swimming pool, spa, and hot tub covers.

The Commission plans to send a written questionnaire to each manufacturer of covers for swimming pools, spas, and hot tubs, requesting information about the firm's conformance with the labeling provisions of the voluntary standard. The Commission has information that approximately 150 firms manufacture products subject to the labeling provisions of the voluntary standard. Establishment inspections will be conducted in cases where manufacturers do not make a timely response to the questionnaire.

Information received from completed questionnaires and reports of inspections will be used by the Commission to determine the level of conformance with the labeling provisions of the voluntary standard by manufacturers of pools, spa, and hot tub covers. If the Commission determines that conformance with the labeling provisions of the voluntary standard is not adequate, it will consider whether to issue mandatory labeling requirements or initiate proceedings to order corrective action with respect to products which present a "substantial product hazard" as that term is used in section 15 of the CPSA (15 U.S.C. 2064).

Additional Details About the Request for Approval of a Collection of Information

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of Information Collection: Voluntary Standard Monitoring Program for Labeling on Covers for Swimming Pools, Spas, and Hot Tubs.

Type of Request: Approval of a new plan.

Frequency of Collection. One time.

General Description of Respondents: Manufacturers and distributors of covers for swimming pools, spas, and hot tubs.

Total Number of Respondents: 150.

Number of Responses per Respondent: 1.

Hours per Response: 8.

Total Hours for all Respondents: 1,200.

Comments: Comments about this request for approval of a collection of information should be addressed to Shawn Canter, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0001]

OMB Clearance Request for SF 28, Affidavit of Individual Surety

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0001).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning SF 28, Affidavit of Individual Surety.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) will be used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 will be used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 500; *responses per respondent,* 1.43; *total annual responses,* 715; *preparation hours per response,* .4; and *total response burden hours,* 286.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0001, SF 28, Affidavit of Individual Surety (SF 28).

Dated: August 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-20426 Filed 8-25-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0045]

OMB Clearance Request for Bid, Performance, and Payment Bonds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0045).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve of an information collection requirement concerning Bid, Performance, and Payment Bonds.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

"Bond" means a written instrument executed by the contractor (the "principal") and a second party (the "surety" or "sureties") to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government") identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

The Miller Act (40 U.S.C. 270a-270e) requires performance and payment bonds for any construction contract exceeding $25,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. Bonds may be required for other contracts when it is deemed appropriate.

The bond(s) are retained by the obligee (the Government) until the principal's (the contractor's) obligation is fulfilled.

This submission requests a revision of OMB approval of an information collection requirement in the Federal Acquisition Regulation (FAR). The information collection requirement in the FAR remains unchanged. However, the burden estimated has been decreased because of the revisions of estimates of usage Governmentwide based upon decreased use by individual sureties since only one individual surety need comply in lieu of the current requirement for two (applies to SF's 24, 25, 25-A, 34, 35, and 1416).

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *19,075*; responses per respondent, *4.87*; total annual responses, *92,895*; preparation hours per response, *.42*; and total response burden hours, *39,016*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0045, Bid, Performance, and Payment Bonds.

Dated: August 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-20425 Filed 8-25-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Advisory Committee on the Air Force History Program; Meeting

August 14, 1992.

The Advisory Committee on the Air Force History Program will hold a meeting on September 17, 1992 from 8:30 a.m. to 4 p.m. and September 18, 1992 from 8:30 a.m. to 12 noon at Bolling Air Force Base (AFB), DC, Building 5681, Office of the Air Force Historian's 2d floor conference room. The purpose of the meeting is to examine the mission, scope, progress, and productivity of the Air Force History Program and make recommendations thereon for the consideration of the Secretary of the Air Force. The meeting will be open to the public. Topics to be discussed include: organization and personnel, current status of historical projects, and the status of the field history program.

For further information, contact Colonel George K. Williams, Deputy Air Force Historian, Bolling AFB DC, telephone (202) 767-5764.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-20374 Filed 8-25-92; 8:45am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.017]

International Research and Studies Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The International Research and Studies Program provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields needed to provide full understanding of the places in which the modern foreign languages are commonly used. This program supports the AMERICA 2000 strategy's efforts to move the nation in the direction of achieving the six National Education Goals, especially Goal 3—increasing the academic achievement levels of all students; and Goal 5—creating an educated citizenry capable of competing in a global economy.

Eligible Applicants: The following are eligible for new awards under this program: Public and private agencies, organizations, institutions, and individuals.

Deadline for Transmittal of Applications: November 2, 1992.

Applications Available: September 25, 1992.

Available Funds: $1,035,000.

Estimated Range of Awards: $30,000 to $170,000.

Estimated Average Size of Awards: $69,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86, and (b) The regulations for this program in 34 CFR parts 655 and 660.

Priorities: Under 34 CFR 75.105(c)(2)(i) and 34 CFR 660.10 and 660.34 the Secretary gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 5 points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority 1

Applications that focus on the development for elementary and secondary education levels of language or area studies materials, or both, about one or more of the following regions: East Asia, Europe, Latin America, Middle East, South Asia, Southeast Asia, and Sub-Saharan Africa.

Competitive Preference Priority 2

Research and studies on more effective methods of instruction in the less-commonly taught languages at the elementary and secondary school levels in the United States.

Competitive Preference Priority 3

Research projects that further the purposes of the International Education Program authorized by part A of title VI of the Higher Education Act.

For Applications or Information Contact: Jose L. Martinez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3053, ROB-3, Washington, DC 20202-5331. Telephone: (202) 708-9297. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1125.

Dated: August 20, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-20371 Filed 8-25-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-671-000, et al.]

Florida Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 19, 1992.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket No. ER92-671-000]

Take notice that on August 13, 1992, Florida Power Corporation filed a supplement to its filing in this docket to comply with a request by the Staff for additional information.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Maine Public Service Co.

[Docket No. ER92-774-000]

Take notice that on August 11, 1992, Maine Public Service Company (Maine Public) tendered for filing revisions to its wholesale electric tariff rate 0-1. The revised tariff sheets will increase annual revenues under Maine Public's wholesale rate by $705,923, based on a 1991 test year. Maine Public has requested that the rate schedule become effective on October 11, 1992.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Co.

[Docket No. ER92-783-000]

Take notice that on August 14, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement with the Seminole Electric Cooperative, Inc. (Seminole). The Letter Agreement amends an existing Letter of Commitment between Tampa Electric and Seminole to add a delivery point and make related changes.

Tampa Electric proposes an effective date of September 1, 1992, for the Letter Agreement, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Co.

[Docket No. ER92-649-000]

Take notice that on August 3, 1992, Northern Indiana Public Service Company (NIPSCO) tendered for filing Amendment No. 1 to its filing which was made on June 17, 1992, in Docket No. ER92-649-000.

This filing was made in order to extend facilities to Indiana Municipal Power Agency's (IMPA) customer, Rensselaer, and to make available to them several new Service Schedules for their operations.

During staff's review of this filing, they have asked several questions about the cost of the proposed project and the derivation of proposed recovery of cost by NIPSCO from IMPA.

This filing is being made to respond to staff's questions.

Copies of this filing have been served upon all of the parties and the Indiana Utility Regulatory Commission.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Power, Inc.

[Docket Nos. ER92-612-000 and ER92-665-000]

Take notice that Entergy Power, Inc. (EPI), on August 14, 1992, tendered for filing amendments to Service Schedules RE, E and ES in Entergy Power interchange agreements with City Utilities of Springfield, Missouri (filed in Docket No. ER92-611-000) and East Kentucky Power Cooperative, inc. (filed in Docket No. ER92-664-000) and a commitment on costing emission allowances in Docket No. ER92-611-000. Entergy Power requests an effective date of May 22, 1992 for Docket No. ER92-611-000, and an effective date of June 1, 1992 for Docket No. ER92-664-000. Entergy Power also requests waiver of the Commission's notice requirements under § 35.11 of the Commission's regulations.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Co.

[Docket No. ER92-776-000]

Take notice that on August 11, 1992, Public Service Electric and Gas Company (PSE&G) tendered for filing, under its existing Rate Schedule in Docket No. ER92-776-000, information to reflect an alternate delivery point and associated transmission service rate for delivery of a portion of the net electrical energy output of Continental Energy Associates, A Limited Partnership (CEA) qualifying facility located in Hazelton, Pennsylvania to Consolidated Edison Company of New York, Inc. (Con-Ed).

The alternate delivery point will permit CEA to deliver electrical energy to Con-Ed on an interruptible basis via the Branchburg-Rampapo 500 kV intertie as an alternate to the Waldwick-Ramapo intertie.

PSE&G seeks approval of the alternate delivery point and associated rate. PSE&G also requests a shortened comment period and waiver of § 35.3(a) of the Commission's Regulations so that the alternate delivery point can be made effective within forty-eight hours of the date of this filing, subject to refund.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER92-778-000]

Take notice that on August 13, 1992, Southern California Edison Company (Edison) tendered for filing the following amendment, executed on July 24, 1992, by the respective parties:

Amendment No. 1 (Amendment) Pasadena-Edison 230 kV Interconnection and Transmission Service Agreement between city of Pasadena and Southern California Edison Company

On August 4, 1990, the Parties entered into the Pasadena-Edison 230 kV Interconnection and Transmission Service Agreement. The Agreement provides that the initial 230 kV facilities within T.M. Goodrich Receiving Station will be constructed by Pasadena subject to Edison's written approval and Edison will operate and maintain the facilities.

On July 24, 1992, the Parties executed the Amendment which provides for certain new 230-kV facilities added to the T.M. Goodrich Receiving Station by Pasadena to be subject to Edison's written approval and Edison will operate and maintain those new facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Co.

[Docket No. ER92-782-000]

Take notice that on August 14, 1992, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), and Holyoke Water Company (HWP), tendered for filing an Agreement between CL&P, WMECO, and HWP and Fitchburg Gas & Electric Light Company and Harris Energy and Realty Corporation providing for an extension in service under existing rate schedules.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective August 4, 1992.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with section 35 of the Commission's regulations.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Co.

[Docket No. ER92-781-000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on August 14, 1992, tendered for filing an agreement for the sale of firm capacity and energy to Orange and Rockland Utilities, Inc. (O&R).

Copies of the filing have been served upon Orange and Rockland, the New York State Public Service Commission and the New Jersey Board of Regulatory Commissioners.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Co.

[Docket No. ER92-651-000]

Take notice that on August 3, 1992, Idaho Power Company (Idaho) tendered for filing a letter and attachments regarding amendment of its request for a temporary rate increase for the period May 6, 1993 to the following wholesale contracts:

1. Idaho Power-Sierra Pacific Company Agreement for a supply of Energy & Power, dated March 10, 1960, FERC Rate Schedule No. 30;

2. The City of Weiser-Idaho Power Company Agreement for Supply of Power, dated April 4, 1963, FERC Rate Schedule No. 42;

3. Idaho Power-Utah Associated Municipal Power Systems Agreement for Supply of Power & Energy, dated February 10, 1988, FERC Rate Schedule No. 75; and

4. Idaho Power Company-Washington City, Utah, Agreement for Supply of Power & Energy, dated July 6, 1987, FERC Rate Schedule No. 74.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Co.

[Docket No. ER92-773-000]

Take notice that on August 11, 1992, Montaup Electric Company (Montaup) filed a Notice of Cancellation of its Rate Schedule FERC No. 96. The Notice of Cancellation provides that the effective date of cancellation of the rate schedule is April 30, 1992.

Rate Schedule FERC No. 96 was an agreement effective November 1, 1991 pursuant to which Montaup agreed to sell to Consolidated Edison Company of New York, 100 MW of capacity and associated energy from Montaup's Canal Unit No. 2 Rate Schedule FERC No. 96 was accepted for filing by letter order issued February 28, 1992 in Docket

No. ER92-202-000 and expired by its own terms on April 30, 1992.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Co.

[Docket No. ER92-780-000]

Take notice that on August 13, 1992, New England Power Company (NEP) tendered for filing an amendment to its Service Agreement with Fitchburg Gas & Electric Light Company under NEP's FERC Electric Tariff, Original Volume No. 3. According to NEP, the amendment would allow NEP to provide additional non-firm transmission for Fitchburg.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Co.

[Docket No. ER92-491-000]

Take notice that on August 14, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amended filing in FERC No. ER92-491-000. FERC Docket No. ER92-491-000 initially submitted to the Commission a settlement agreement resolving disputes regarding the nature of transmission service provided by PG&E to the Lawrence Livermore National Laboratory (LLNL). This settlement agreement was between United States Department of Energy, San Francisco Field Office (DOE/SF).

Subsequent to the filing, FERC Staff contacted PG&E and requested that PG&E amended its filing by submitting a page of the settlement agreement which had been omitted from the filed copies. After reviewing PG&E's amended filing, FERC Staff contacted PG&E and FERC requested that certain components and a factor used as part of the "Annual Transmission Rate Adjustment Factor" (ATRAF) in Exhibit B of the LLNL Settlement Agreement either not be used or explained further as to why they are appropriate. Accordingly, PG&E has submitted an amended copy of the settlement agreement.

Copies of this filing have been served upon DOE/SF, Western the CPUC and the parties on the Service List to FERC Docket No. ER92-491-000.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Co.

[Docket No. ER92-777-000]

Take notice that on August 12, 1992, Carolina Power & Light Company (CP&L) tendered for filing with the Commission the changes outlined below to its agreements with French Broad EMC, Lumbee River EMC, Piedmont EMC, and the City of Camden.

1. *City of Camden—Dusty Bend 115 kV*—Installation of new point of delivery including special provisions for providing facilities for metering pulse information.

2. *French Broad EMC—Weaverville 115 kV*—Installation of a new point of delivery.

3. *French Broad EMC—Burnsville 115 kV*—Increase in metered voltage from 69 kV to 115 kV.

4. *Lumbee River EMC—Hog Swamp 115 kV*—Addition of special provisions for providing facilities for metering pulse information.

5. *Lumbee River EMC—Rockfish 115 kV*—Change in metered voltage from 12 kV and 69 kV to 115 kV and adjusted the additional facilities to reflect the addition of pulses at the 115 kV meter and removal at the 12 kV and 69 kV meters.

6. *Piedmont EMC—Hyco 138 kV*—Installation of a new point of delivery including special provisions for providing facilities for metering pulse information.

7. *Tri-County EMC—Grantham 115 kV*—Change in delivery voltage from 69 kV to 115 kV.

The Company requests that the notice period be waived and that these supplements be made effective coincident with the effective dates set forth in the Exhibit A's and the contract amendment.

A copy of this filing has been sent to the affected parties, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Lake Cogen, Ltd.

[Docket No. QF92-198-000]

On August 14, 1992, Lake Cogen, Ltd., c/o North Canadian Power Incorporated, 1100 Town & Country Road, Suite 800 Orange, California 92668, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 39017 Golden Gem Drive, Umatilla, Florida 32784. The facility will include two combustion turbine generators, two supplementary fired heat recovery boilers, an extraction/condensing steam turbine generator (STG), step-up transformer, switch yard, and a 69 kV interconnecting transmission line to Florida Power Corporation. Heat recovered from the facility will be used in the Host's citrus/food processing and chilling operations. The maximum net electric power production capacity of the facility will be 106 MW. The primary energy source will be natural gas. The installation of the facility commenced on February 1992 with an expected commercial operation in July 1993.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20481 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-284-000, et al.]

Vermont Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 20, 1992.

Take notice that the following filings have been made with the Commission:

1. Vermont Electric Power Co.

[Docket No. ER92-284-000]

Take notice that on July 30, 1992, Vermont Electric Power Company tendered for filing additional information requested by Commission staff in the above-referenced docket.

Comment date: September 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Green Mountain Power Corp.

[Docket No. ER92-460-000]

Take notice that on July 28, 1992, Green Mountain Power Corporation (GMP) tendered for filing a letter requesting that the proceedings in the

above-referenced docket be terminated concurrently with Docket Nos. ER92–103–000 through ER92–108–000.

Comment date: September 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corp.

[Docket No. ER92–786–000]

Take notice that on August 17, 1992, Florida Power Corporation (Florida Power) filed a contract for the provision of interchange service between itself and Oglethorpe Power Corporation. Florida Power requests that the contract become effective on October 17, 1992, which is 60 days after the contract was tendered for filing.

Florida Power states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to the customer affected by the filing and to the Florida Public Service Corporation.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power System Inc.

[Docket No. ER92–784–000]

Take notice that on August 17, 1992, Midwest Power Systems Inc., 666 Grand Avenue, Des Moines, Iowa 50309, a wholly owned subsidiary of Midwest Resources Inc., tendered for filing notice that it is the successor to Iowa Power Inc. (IPR) and Iowa Public Service Company (IPS) and that it adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto previously filed with the Federal Energy Regulatory Commission and the Federal Power Commission by IPR and IPS.

The notice of succession was filed as a result of the merger on July 22, 1992, of IPR and IPS, with and into Midwest Power Systems Inc.

Copies of the filing were served upon Midwest Power System Inc.'s jurisdictional customers and the Iowa Utilities Board, Minnesota Public Utilities Commission and the South Dakota Utilities Commission.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER92–785–000]

Take notice that on August 17, 1992, Florida Power & Light Company (FPL) filed Amendment Number One to the Long-Term Agreement to Provide Capacity and Energy Florida Power & Light Company to Florida Keys Electric Cooperative Association, Inc.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Co.

[Docket No. ER92–788–000]

Take notice that on August 14, 1992, Florida Power & Light Company (FPL) filed Supplement No. 1 to the Agreement for Purchases or Sales of Electric Power and Energy Between Florida Power & Light Company and Oglethorpe Power Corporation. FPL requests an effective date of July 1, 1992.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Co.

[Docket No. ER92–787–000]

Take notice that on August 17, 1992, Idaho Power Company (IPC) tendered for filing a Firm Transmission Services Agreement dated April 9, 1992, between Idaho Power Company and Sierra Pacific Power Company.

Idaho Power has requested an effective date for the Firm Transmission Services Agreement of October 20, 1992.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Lake Cogen, Ltd.

[Docket No. QF92–198–000]

On August 13, 1992, as supplemented on August 14, 1992, Lake Cogen, Ltd., c/o North Canadian Power Incorporated, 1100 Town & Country Road, Suite 800 Orange, California 92668, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogneration facility will be located at 39017 Golden Gem Drive, Umatilla, Florida 32784. The facility will include two combustion turbine generators, two supplementary fired heat recovery boilers, an extraction/condensing steam turbine generator (STG), step-up transformer, switch yard, and a 69 kV interconnecting transmission line to Florida Power Corporation. Heat recovered from the facility will be used in the Host's citrus/food processing and chilling operations. The maximum net electric power production capacity of the facility will be 106 MW. The primary energy source will be natural gas. The installation of the facility commenced on February 1992 with an expected commercial operation in July 1993.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–20480 Filed 8–25–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–221–000]

Distrigas Corp.; Proposed Changes in FERC Gas Tariff

August 20, 1992.

Take notice that Distrigas Corporation (Distrigas), on August 18, 1992, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of September 17, 1992:

First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 11

Distrigas states that the proposed tariff sheets would modify the Special Rate Schedule under which Distrigas sells imported LNG to Distrigas of Massachusetts Corporation (DOMAC). Distrigas states that the proposed changes reflect the addition of Nigeria LNG Limited as a source of LNG supply to Distrigas, which supply, in turn, will be available to DOMAC for sale to gas utilities, interstate pipelines and end users. Distrigas also states that the revised tariff sheet adjust the transfer pricing terms between Distrigas and

DOMAC to reflect the expanded nature of its LNG supply arrangements. The new pricing structure will set the transfer price between the two companies as a percentage (85%) of DOMAC's average sales price in each calendar year.

Distrigas states that copies of the filing were served upon DOMAC's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20437 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-119-024]

Tennessee Gas Pipeline Co.; Tariff Filing

August 20, 1992.

Take notice that on August 17, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following revised sheet to its Fourth Revised Vol. I of its FERC Gas Tariff.

First Revised Sheet No. 22

Tennessee states that the purpose of this filing is to state the maximum TGIC gas rate for the month of August.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20438 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-12-000]

Williams Natural Gas Co.; Conference

August 20, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 9, 1992, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If necessary, the conference will continue through September 10, 1992.

The purpose of the conference is to address how Williams' Natural Gas Company proposes to comply with the requirements of Order Nos. 636 and 636-A.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene pursuant to the Commission's regulations (18 CFR 385.214). For additional information, interested persons may call Lorna J. Hadlock at (202) 208-0917.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20439 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-13-000]

Williston Basin Interstate Pipeline Co.; Prefiling Conference

August 20 1992.

Take notice that on September 3, 1992, at 9 a.m., a conference will be convened in the above-captioned docket to discuss Williston Interstate Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Warren C. Wood at (202) 208-2091 or Thomas E. Gooding at (202) 208-0831.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20440 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4199-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 25, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks (EPA ICR #0167.04; OMB #2060-0094). This ICR requests renewal of the existing clearance.

Abstract: In order to enforce compliance with the emission standards, under the emission recall program, EPA tests in-use vehicles using Federal Test Procedures (FTP). The FTP specify parameters and parts list that vary with manufacturer and model. Therefore, EPA needs to verify with manufacturers that the specified parameters and parts lists are current for, and appropriate to, the vehicles being tested.

Burden Statement: The public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden on Respondents: 150 hours.

Frequency of Collection: On occasion.

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: August 20, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-20461 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4199-3]

Constituent Meeting To Discuss the Cumulative Burden of Environmental Regulations on Local Governments and Small Communities

On September 10, 1992 EPA will meet with local and state officials and representatives from public interest and environmental groups to discuss the cumulative burden of federal environmental regulations on local governments and small communities.

This meeting is being convened by EPA's Office of Regional Operations and State/Local Relations as an organizational meeting intended to gather information concerning the nature and extent of future work with constituents on this issue. The purpose is to identify constituents' specific issues, interests and goals for working with EPA on the cumulative burden issue, and to identify additional constituent groups who should be involved. The Agency anticipates that subsequent work may be chartered under the Federal Advisory Committee Act.

The meeting will be held from 10:30-4:30 at the National Rural Electric Cooperative Association, 1800 Massachusetts Ave. NW., Washington, DC 20036.

All interested persons and organizations are invited to attend. Because meeting space is limited, the Agency asks that interested parties contact Lou Kerestesy, Office Of Regional Operations and State/Local Relations, H-1501, U.S. EPA, 401 M Street SW., Washington, DC 20460, or call at 202-260-4719 to inform the Agency of their intent to attend the meeting. Meeting minutes will be available and can be obtained upon written request to the Agency in care of Mr. Kerestesy at the address provided above.

Gerald A. Fill,

Acting Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 92-20457 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4198-9]

Meeting of the Grand Canyon Visibility Transport Commission Technical Committees

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing meetings of the Technical, Alternatives Assessment and Communications Committees, referred to as the Technical Committees, of the Grand Canyon Visibility Transport Commission on September 9 and 10, 1992, in Santa Fe, New Mexico. The Technical Committees were established by the Commission to carry out tasks within the workplan approved by the Commission June 21, 1992. The Commission was established on November 13, 1991 (see 56 FR 57522) (November 12, 1991) under section 169B of the Clean Air Act Amendments of 1990 (Act). The primary purposes of these meetings are for the Committees to organize and assign workplan tasks to participating state, federal, private and non-governmental organizations. These meetings are not subject to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended.

DATES: The meetings will be held as follows:

Technical Committee—Wednesday, September 9, 8 a.m.-noon;

Alternatives Assessment Committee—Wednesday, Sept. 9, 1-5 p.m.;

Communications Committee—Thursday, Sept. 10, 8 a.m.-noon.

ADDRESS: The meetings will be held in Santa Fe, New Mexico, in the Aspen Room of the Hilton of Santa Fe Hotel, 100 Sandoval Street, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: James M. Souby, Executive Director, Western Governors' Association, 600 17th Street, Suite 1705 South Tower, Denver, Colorado 80202. Phone number (303) 623-9378 and fax number (303) 534-7309. Persons wishing to serve on one of the Technical Committees should mail or fax a letter of interest and a resume to Mr. Souby.

SUPPLEMENTARY INFORMATION: The commission is charged with assessing currently available studies and information pertaining to visibility impairment at the Grand Canyon National Park from sources in the transport region (including potential or projected growth) and is to issue a report to U.S. EPA within four years recommending what measures, if any, should be taken under the Clean Air Act to remedy such impairment. The Administrator of EPA has used his broad discretionary authority under section 169B of the Act to Expand the scope of the Commission to include additional class 1 areas in the vicinity of Grand Canyon National Park—what is sometimes referred to as "Golden Circle" of parks and wilderness areas. This includes most of the national parks and wilderness areas of the Colorado Plateau. The Administrator established the visibility transport region to include all or part of the following states: Arizona, California, Colorado, New Mexico, Nevada, Oregon, and Utah, and invited the Governors of those States or their designees to participate as members of the Commission. The Administrator also invited the Chief of the U.S. Forest Service and the Directors of the Bureau of Land Management, U.S. Fish And Wildlife Service and National Park Service to represent their Federal Agencies on the Commission.

Three Technical Committees have been established: the Technical, Alternatives Assessment and Communications Committees. The Technical Committee is charged with helping the Commission in (1) the review of currently available studies in order to answer as many questions of concern to the Commission as possible by examining existing analyses of existing data or conducting additional analysis of existing data; (2) the identification of new data needs if questions cannot be answered using existing data and the acquisition of data through ongoing or planned research and monitoring programs sponsored by a variety of entities or, where feasible, filling other data gaps through new, highly focused data gathering efforts; and, (3) the projection of future haze conditions in the Golden Circle by characterizing emissions and resulting visibility based on what is likely to occur due to growth, the effects of the Clean Air Act, and other area-specific emission changes.

The Alternatives Assessment Committee is charged with assisting the Commission to: (1) Identify emission management Options. The management alternatives assessment will examine options for making reasonable progress toward remedying existing and

preventing future visibility impairment in the Golden Circle; (2) Assess the Technical Feasibility of Selected Management Options, Costs and Socioeconomic Costs and Benefits. Based on guidance regarding options to be studied from the Commission, additional information will be generated on the technical feasibility, direct cost and estimates of the socioeconomic costs and benefits of management options developed to protect/improve visibility. Based on input obtained in public workshops, criteria for evaluating management options will be developed and the full range of options will be screened to assess their relative "acceptability". The Commission will develop a consensus on the most promising management options (with input from the public) for making reasonable progress toward remedying existing and preventing future visibility impairment in the Golden Circle; and, (3) conduct integrated assessment of preferred management options based on selected case studies. This subset of preferred options will be subjected to more detailed analysis.

The Communications Committee has been charged with helping the Commission: (1) To assess mechanisms for ensuring that the public has adequate input and opportunity to comment on Commission activities; (2) to ensure that all workshops and other public input opportunities are structured in such a way as to be fair to all; (3) to take responsibility for internal editing of all public communications to ensure that they simply and understandably synthesize all issues; (4) to facilitate external communications (from the commission or committees to the public), including developing proposals on how to convey messages to the public; (5) to make sure activities of the Commission are adequately communicated to hard to reach publics, especially those that might be appointed to the Public Advisory Committee; (6) to propose efficient and effective ways to communicate with the public; (7) to develop mechanisms for involving Mexico in Commission activities; and (8) to develop a media communications plan or strategy.

Dated: August 18, 1992.

Daniel W. McGovern,

Regional Administrator, U.S. Environmental Protection Agency, Region 9.

John Wise,

Acting Regional Administrator.

[FR Doc. 92-20460 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board

[FRL-4198-6]

Radiation Advisory Committee, High-Level Waste/Carbon-14 Release Subcommittee, Open Meeting, September 9-10, 1992

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the High-Level Waste/Carbon-14 Release Subcommittee of the Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet September 9-10, 1992 at the U.S. Environmental Protection Agency Headquarters, Waterside Mall Conference Center, room 3-North, 401 M Street, SW., Washington, DC 20460. The Subcommittee meeting will begin at 9 a.m. September 9 and adjourn no later than 5 p.m. on Thursday, September 10. The meeting is open to the public and seating is limited.

This is the final meeting of the Subcommittee. At this meeting the Subcommittee plans to complete its review of issues relating to the gaseous release of carbon-14 from high-level radioactve waste disposal. The charge for this review appeared in the May 29, 1992 **Federal Register** at 57 FR 22747-22748. The Subcommittee will consider, revise, and edit a first draft of the Subcommittee's report on the questions raised in the charge. Copies of this draft will be made available to the Agency and the public no earlier than Thursday, September 3. Individuals who want copies should call Mrs. Clark. The Radiation Advisory Committee plans to consider the Subcommittee's report at a public meeting on October 29-30, 1992. The SAB's Executive Committee will consider the report in January 1993 before it is transmitted to the Administrator.

Availability of Documents

The primary documents under Subcommittee review are, (1) "Office of Radiation Programs' Position on the Potential for Gaseous Release from a High-Level Waste Repository" and (2) the June 10, 1992 draft "Issues Associated with Gaseous Releases of Radionuclides for a Repository in the Unsaturated Zone" prepared by SC&A Inc. and Rogers & Associates Engineering Corp for EPA's Office of Radiation Programs. Copies of the review documents and other materials provided to the Subcommittee will be maintained in EPA Docket R-89-01 as announced in the **Federal Register** May 29, 1992. They are *not* available from the Science Advisory Board.

Opportunity for Public Comments

Opportunity for public comments on this issue will be provided at the Subcommittee meeting. Written comments may be of any length. Individuals who wish their materials sent to the Subcommittee before the September meeting should provide 20 copies to Mrs. Conway before Friday, September 4; individuals who wish to provide materials at the meeting should bring at least 50 copies so that there will be some for the audience as well as the Subcommittee.

The total time for oral public comments will be limited to approximately one-half hour. If many requests to present oral comments are received, each individual or group will be limited to five minutes. Members of the public who wish to make brief oral presentations to the Subcommittee should write or fax Mrs. Conway no latter than noon Friday, September 4. Requests for time for oral comments must include the name and affiliation of the speaker and the topic(s) to be addressed. Both an overhead projector and a 35 mm slide projector will be available. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written comments.

For details concerning this meeting, including a draft agenda, please contact Mrs. Kathleen Conway or Mrs. Dorothy Clark, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone 202/260-6552. Fax 202/260-7118.

Dated: August 11, 1992.

A.R. Flaak,

Acting Director Science Advisory Board.

[FR Doc. 92-20327 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL TRADE COMMISSION

[File No. 902 3031]

Inter-Fact, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an Ohio corporation and two of its officers to cease and desist from furnishing any consumer

report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act. In addition, respondents would be required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S-4429, Washington, DC 20580. (202) 326-3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at it principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Inter-Fact, Inc., a corporation, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease to and desist from the use of the acts and practices being investigated,

It is hereby agreed By and between Inter-Fact, Inc., by its duly authorized officers, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Inter-Fact, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 20676 Southgate Park Boulevard, Maple Heights, Ohio 44137.

Proposed respondents James Polgar and Bruce R. Marks are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their business address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and "employment purposes" are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

"Mixed-used subscriber" means a subscriber who is the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

"Permissible purpose" means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

It is Ordered That respondents, Inter-Fact, Inc., a corporation, its successors and assigns, and its officers, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the

furnishings of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report under any circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, as required by section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current subscribers, within six months after the date of this Order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber's business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under section 604 of the FCRA that is substantially identical to the summary attached to this Order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that purpose, unless the subscriber has previously certified that purpose to respondents, pursuant to subparagraph 2.a.(i) above, as the only purpose for which it requests consumer reports.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms, For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv)(A) Conducting periodic checks, not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(iv)(B) Respondents shall conduct these checks by:

(1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage prepaid envelope and request that the questionnaire be returned therein; or by

(2) providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(v) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(iv)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, W-2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vi) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the

number of consumer reports expected to be obtained.

(vii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(iv)(A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error—i.e., a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in section 613(2) of the FCRA.

II

It is further ordered That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this Order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this Order, and any notices provided to subscribers in connection with the terms of this Order.

III

It is further ordered That respondents shall deliver a copy of this Order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV

It is further ordered That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V

It is further ordered That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VI

It is further ordered That respondents shall, within sixty (60) days of service of this Order upon them, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Exhibit A—Important Notice for Subscribers

The federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to

rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit employment, or insurance—those purposes are permissible only if they meet the standards of (3)(A)–(C).

Consumer Reports Will be Provided Only for These Purposes

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Inter-Fact Inc., a corporation, and its officers, James Polgar and Bruce R. Marks ("the respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents' business involves the purchase of information on individual consumers from credit reporting agencies and the resale of that information to third parties. Firms engaged in this type of business are sometimes called "information brokers," or "superbureaus." The complaint accompanying the proposed order alleges that in connection with their buying and selling of consumer reports, the respondents engaged in acts and practices violating sections 604, 607(a), and 613 of the Fair Credit Reporting Act and section 5(a) of the Federal Trade Commission Act.

The FCRA requires that consumer reporting agencies, such as superbureaus, maintain procedures designed to protect consumers' privacy. According to the complaint, the respondents have violated section 604 of the Fair Credit Reporting Act by regularly furnishing consumer reports to persons under circumstances in which the respondents have no reason to believe that the reports will be used for any of the purposes permitted under that section of the Act. Two of the circumstances cited in the complaint are (1) respondents' furnishing of consumer reports to new customers without having made a reasonable effort to verify the identities of these customers and the purposes for which they will use the reports and (2) respondents' furnishing of consumer reports to new customers without having them certify the permissible purpose for which the reports will be used and that the reports will be used for no other purpose.

The complaint also alleges that respondents furnish consumer reports to certain types of subscribers, such as attorneys and private investigators, who typically have impermissible as well as permissible purposes for the consumer reports they obtain. Such subscribers are known as "mixed use" users. According to the complaint, in many instances, respondents do not have reason to believe that these reports have been requested for a permissible purpose. The complaint also charges that respondents make no effort to verify that consumer reports are being used only for the purposes stated by the customers for obtaining the reports.

The complaint further alleges that, through the conduct discussed above, respondents have violated section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 and by furnishing consumer reports to persons when they have reasonable grounds for believing that the consumer reports will not be used for a purpose listed in section 604.

Additionally, the complaint alleges that the respondents regularly furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, but when furnishing these reports, the respondents do not notify the subject consumers that respondents are reporting public record information about them, nor do they tell the consumers the names and addresses of the persons to whom the respondents have furnished the reports. Because, the complaint alleges, the respondents do not have procedures to insure that the public record information they are reporting is complete and up to date, the respondents' failure to provide the notice violates section 613 of the Fair Credit Reporting Act.

The consent order contains provisions designed to ensure that the respondents do not engage in similar unlawful acts and practices in the future.

Part I of the order requires the respondents to cease and desist from furnishing any consumer report under any circumstances not permitted by section 604 of the Fair Credit Reporting Act.

Part I also requires the respondents to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed in section 604, as required by section 607(a) of the Fair Credit Reporting Act, and mandates specific procedures that must be followed to accomplish this objective. These include measures to verify the identities of new customers, the nature of their business, and the purposes for which they seek to obtain consumer reports and a procedure for conducting periodic audits to verify that mixed-use users are using consumer reports solely for permissible purposes. The specific procedures set forth in Paragraph 2 of Part I are not necessarily mandated by the FCRA's "reasonable procedures" requirement but are considered by the Commission to be appropriate remedial relief in this case to prevent recurrence of the alleged violations.

Part I further requires that any time respondents furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, they must notify the consumer, at the time the report is furnished, that public record information about the consumer is being reported and provide the name and address of the person to whom the report is being furnished, as is required by section 613(1) of the Fair Credit Reporting Act. The order permits the respondents to forego providing this notification if they have either received written confirmation from the consumer reporting agency that complied the consumer report that the agency provides such notification to the consumer, or have received written confirmation from the agency that it maintains strict procedures designed to ensure that the public record information it reports is complete and up to date, as required by section 613(2).

Part II of the order requires the respondents and their successors and assigns to maintain documents demonstrating compliance with the order for (5) years and to make such documents available to the Commission upon request.

Part III of the order requires the respondents to deliver a copy of the order to all present and future employees, agents, or representatives having responsibilities related to the respondents' compliance with the order.

Part IV of the order requires the respondents to notify the Commission at least thirty (30) days before any proposed change in the structure of the respondent corporation that might affect compliance with the order.

Part V of the order requires the individual respondents to promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new one. Also, for ten (10) years

from the date the order is served, the individual respondents must promptly notify the Commission of their affiliation with a new business or employment whose activities include the assembling or evaluating of consumer information or the furnishing of consumer reports or access to consumer reports to third parties, or in which their own duties or responsibilities involve such activities.

Part VI of the order requires the respondents to file a written report with the Commission within sixty (60) days after service of the order detailing the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-20413 Filed 8-25-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3030]

I.R.S.C., Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California corporation and one of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act. In addition, respondents would be required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S-4429, Washington, DC 20580. (202) 326-3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of I.R.S.C., Inc., a corporation doing business as Information Resource Service Company, and Jack H. Reed, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease to and desist from the use of the acts and practices being investigated,

It is hereby agreed By and between I.R.S.C., Inc., by its duly authorized officer, Jack H. Reed, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent I.R.S.C., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3777 North Harbor Boulevard, Fullerton, California 92365.

Proposed respondent Jack H. Reed is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts alleged in the attached draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and "employment purposes" are defined as set forth in Sections 603 (b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act "FCRA"), 15 U.S.C. § § 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

"Mixed-use subscriber" means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

"Permissible purpose" means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I

It is ordered that respondents, I.R.S.C., Inc., a corporation, its successors and assigns, and its officers, and Jack H. Reed, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with the evaluation of an insurance claim or in connection with any insurance purpose other than the underwriting of insurance involving the consumer, unless furnishing the consumer report is otherwise permitted under sections 604(1) or 604(2) of the FCRA, or furnishing any consumer report under any other circumstances not permitted by section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current subscribers, within six months after the date of this Order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber's business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under section 604 of the FCRA that is substantially identical to the summary attached to this Order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers: (i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv) Disclosing the following message, or one substantially identical to it, on the computer screen each time a subscriber transmits a request by computer for a consumer report: "The federal Fair Credit Reporting Act imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses."

(v)(A) Conducting periodic checks, not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-

month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(v)(B) Respondents shall conduct these checks by: (1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage prepaid envelope and request that the questionnaire be returned therein; or by

(2) Providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(vi) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(v)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, a W-2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vii) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(viii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(v) (A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error—i.e., a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in section 613(2) of the FCRA.

II

It is further ordered That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this Order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this Order, and any notices provided to subscribers in connection with the terms of this Order.

III

It is further ordered That respondents shall deliver a copy of this Order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV

It is further ordered That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V

It is further ordered That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumers reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VI

It is further ordered That respondents shall, within sixty (60) days of service of this Order upon them, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Exhibit A—Important Notice for Subscribers

The federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance—those purposes are permissible only if they meet the standards of (3)(A)–(C).

Consumer Reports Will be Provided Only for These Purposes

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from I.R.S.C., Inc., a corporation, and its Chief Executive Officer, Jack H. Reed ("the respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents' business involves the purchase of information on individual consumers from credit reporting agencies and the resale of that information to third parties. Firms engaged in this type of business are sometimes called "information brokers," or "superbureaus." The complaint accompanying the proposed order alleges that in connection with their buying and selling of consumer reports, the respondents engaged in acts and practices violating sections 604, 607(a), and 613 of the Fair Credit Reporting Act and section 5(a) of the Federal Trade Commission Act.

The FCRA requires that consumer reporting agencies, such as superbureaus, maintain procedures designed to protect consumers' privacy. According to the complaint, the respondents have violated section 604 of the Fair Credit Reporting Act by regularly furnishing consumer reports to persons under circumstances in which the respondents have no reason to believe that the reports will be used for any of the purposes permitted under that section of the Act. One of the circumstances cited in the complaint is respondents' furnishing of consumer reports in connection with insurance claims investigations, even though section 604 sets forth underwriting (*i.e.*, determining one's eligibility for insurance) as the only insurance-related purpose permitted under the Fair Credit Reporting Act.

The complaint also alleges that respondents furnish consumer reports to certain types of subscribers, such as attorneys and private investigators, who typically have impermissible as well as permissible purposes for the consumer reports they obtain. Such subscribers are known as "mixed use" users. According to the complaint, in many instances, respondents do not have reason to believe that these reports have been requested for a permissible purpose. The complaint also cites as a violation of section 604 respondents' furnishing of consumer reports to new customers without having made a reasonable effort to verify the purposes for which these customers will use the reports.

The complaint further alleges that through the conduct discussed above, respondents have violated section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 and by furnishing consumer reports to persons when they have reasonable grounds for believing that the consumer reports will not be used for a purpose listed in section 604.

Additionally, the complaint alleges that the respondents regularly furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, but when furnishing these reports, the respondents do not notify the subject consumers that respondents are reporting public record information about, them, nor do they tell the consumers the names and addresses of the persons to whom the respondents have furnished the reports. Because, the complaint alleges, the respondents do not have procedures to insure that the public record information they are reporting is complete and up to date, the respondents' failure to provide the notice violates Section 613 of the Fair Credit Reporting Act.

The consent order contains provisions designed to ensure that the respondents do not engage in similar unlawful acts and practices in the future.

Part I of the order requires the respondents to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished. The respondents are further required to cease and desist from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act.

Part I also requires the respondents to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed in section 604, as required by section 607(a) of the Fair Credit Reporting Act, and mandates specific procedures that must be followed to accomplish this objective. These include measures to verify the identities of new customers, the nature of their business, and the purposes for which they seek to obtain consumer reports and a procedure for conducting periodic audits to verify that mixed-use users are using consumer reports solely for permissible purposes. The specific procedures set forth in Paragraph 2 of Part I are not necessarily mandated by the FCRA's "reasonable procedures" requirement but are considered by the Commission to be appropriate remedial relief in this case to prevent recurrence of the alleged violations.

Part I further requires that any time respondents furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, they must notify the consumer, at the time the report is furnished, that public record information about the consumer is being reported and provide the name and address of the person to whom the report is being furnished, as is required by section 613(1) of the Fair Credit Reporting Act. The order permits the respondents to forego providing this notification if they have either received written confirmation from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer, or have received written confirmation from the agency that it maintains strict procedures designed to ensure that the public record information it reports is complete and up to date, as required by section 613(2).

Part II of the order requires the respondents and their successors and assigns to maintain documents demonstrating compliance with the order for five (5) years and to make such documents available to the Commission upon request.

Part III of the order requires the respondents to deliver a copy of the order to all present and future employees, agents, or representatives having responsibilities related to the respondents' compliance with the order.

Part IV of the order requires the respondents to notify the Commission at least thirty (30) days before any proposed change in the structure of the respondent corporation that might affect compliance with the order.

Part V of the order requires the individual respondent to promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new one. Also, for ten (10) years from the date the order is served, the individual respondent must promptly notify the Commission of his affiliation with a new business or employment whose activities include the assembling or evaluating of consumer information or the furnishing of consumer reports or access to consumer reports to third parties, or in which his own duties or responsibilities involve such activities.

Part VI of the order requires the respondents to file a written report with the Commission within sixty (60) days after service of the order detailing the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-20427 Filed 8-25-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

Montana; Notice of Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Miles City District Office, Interior (MT-020-02-4333-10).

ACTION: Notice of Off-Road Vehicle Designation Decision.

SUMMARY: Notice is hereby given that after a 30 day comment period and no adverse comments are received, off-road vehicle use is limited on some public land within the Graves Ranch Cooperative Management Area. The decision will be in effect during the State-designated big game hunting season of each year. This designation is located in Musselshell County, Montana, and is in accordance with the authority and requirements of Executive Orders 11644 and 11989 and Regulations 43 CFR 8340.

DATES: This designation will be in effect only during the State-designated big game hunting season of each year, or until rescinded by the authorized officer.

FOR FURTHER INFORMATION CONTACT: The following BLM office or the Montana Department of Fish, Wildlife and Parks office:

BLM Billings Resource Area, 810 E. Main, Billings, Montana, 59105, Telephone: (406) 657-6262.

MDFW&P, Region 5, 2300 Lake Elmo Road, Billings, Montana, 59105, Telephone: (406) 252-4654.

SUPPLEMENTARY INFORMATION: The Graves Ranch Cooperative Management Area consists of 20,000 acres, including approximately 5,000 acres of public land. Of this 5,000 acres, vehicular use will not be allowed on approximately 280 acres (T.11 N.,R.24 E., S. 35, N½ NW¼, SE¼ NW¼, and SW¼) during the big game hunting season. The area affected by the designation is administered in a cooperative effort involving Bureau of Land Management, Miles City District, Billings Resource Area; Gary and Alan Graves, owners of the Graves Ranch; and Montana Department of Fish, Wildlife and Parks. The purpose of this designation is to prevent further damage to soil and vegetative resources, open additional private lands to hunting, reduce user conflicts, and provide a higher quality hunt to the public user.

Graves Ranch Cooperative Management Area is located 14 miles north of Roundup, Montana. Approximate boundaries are: to the south is the Snowy Mountain Road, to the east is State Highway 87, to the north is the Musselshell County line, and to the west is Jones Creek. Some area is closed to shooting, some is walk-in only, and some has no restrictions.

This designation is in accordance with the final Billings RMP-EIS, thus no additional EIS or EAR is needed.

Darrel G. Pistorius,

Acting District Manager.

[FR Doc. 92-20421 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF THE INTERIOR

[OR-943-4214-10; GP2-399; OR-48432(WASH)]

Public Meeting; Proposed Withdrawal and Initiation of Resource Management Plan Amendment; Washington; Correction

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice.

SUMMARY: A District Resource Management Plan (RMP) Amendment-Environmental Assessment will be prepared to address the U.S. Department of the Army, Corps of Engineers application to withdraw public lands to expand the Yakima Firing Center. This

notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding both the proposed RMP amendment and the proposed withdrawal.

DATES: The public meeting will be held September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jim Fisher, BLM, Wenatchee Resource Area Office, 1133 N. Western Ave., Wenatchee, Washington 98801, telephone 509–662–4223.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a meeting will be held to provide an opportunity for public involvement regarding the application by the U.S. Department of the Army, Corps of Engineers to withdraw 9,745.82 acres of public lands within the Yakima Firing Center expansion area. Public involvement is also needed for the concurrent proposal to amend the BLM Spokane District Resource management Plan to allow the subject withdrawal. The public lands are mostly checkerboard tracts, and are located in the portion of BLM's Saddle Mountain Management Area west of the Columbia River, extending south from I–90 to the present boundary of the Yakima Firing Center. These lands are currently managed for wildlife habitat, range, and recreation. The proposed withdrawal would close the lands to settlement, sale location, and entry under the general land laws, including the U.S. mining laws (30 U.S.C. ch. 2), and from applications and offers under the mineral leasing laws, subject to valid existing rights. This proposal will be evaluated by an interdisciplinary team of natural resource specialists, including a wildlife biologist, range conservationist, botanist, archaeologist, recreation specialist and realty specialist.

The meeting will begin at 7 p.m., Wednesday, September 23, 1992, at the Hal Holmes Center, 201 N. Ruby Street, Ellensburg, Washington. The agenda will include (1) information briefings by both the BLM and the U.S. Army Corps of Engineers, (2) oral statements by interested parties; and (3) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Spokane District Office. Oral statements will be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management and the Corps of Engineers before any recommendation concerning the proposed withdrawal is submitted to the Secretary of the Interior of final action under the authority of section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. Documents relative to the plan amendment may be obtained from the BLM Spokane District Office (E. 4217 Main, Spokane, WA 99202), the BLM Wenatchee Resource Area Office (address given above), and the U.S. Army Corps of Engineers, Seattle District (P.O. Box 3755, Seattle, WA 98124–2255).

Dated: August 14, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–20376 Filed 8–25–92; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

International Introductions Policy Review Committee Meetings

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meetings.

SUMMARY: This notice announces two meetings of the Intentional Introductions Policy Review Committee, a committee of the Aquatic Nuisance Species (ANS) Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*). The purpose of both meetings will be to discuss the findings and conclusions of the intentional introductions policy review and to develop recommendations for reducing the risk of adverse consequences associated with introductions of aquatic organisms. The meetings are open to the public.

TIMES AND DATES: Public meetings are scheduled for September 9 (10:30 a.m. to 4 p.m. and October 5 (10 a.m. to 4 p.m.), 1992 in Arlington, Virginia.

ADDRESSES: Both meetings will be held at the U.S. Fish and Wildlife Service Office Building at 4401 North Fairfax Drive, Arlington, Virginia. The September 9 meeting will be held in the third floor conference room (rm. 300); the October 5 meeting in the second floor conference room (room 200).

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Lassuy at (703) 358–1718.

Dated: August 20, 1992.

Gary Edwards,

Alternate Co-Chair, ANS Task Force, Assistant Director, Fisheries.

[FR Doc. 92–20367 Filed 8–25–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 10:30 a.m. (PDT) on Saturday, September 26, 1992, at West Marin School, Point Reyes Station, California. The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco, and San Mateo Counties.

Members of the Commission are as follows: Mr. Richard Bartke, Chairman, Ms. Amy Meyer, Vice Chair, Mr. Ernest Ayala, Dr. Howard Cogswell, Brig. Gen. John Crowley, USA (ret), Mr. Margot Patterson Doss, Mr. Neil D. Eisenberg, Mr. Jerry Friedman, Mr. Steve Jeong, Ms. Daphne Greene, Ms. Gimmy Park Li, Mr. Gary Pinkston, Mr. Merritt Robinson, Mr. R. H. Sciaroni, Mr. John J. Spring, Dr. Edgar Wayburn, Mr. Joseph Williams, Mr. Mel Lane.

The first agenda item at this public meeting will be a briefing on the Point Reyes National Seashore interpretive programs. The briefing will include programs at the Ken Patrick Visitor Center at Drakes Beach, the Bear Valley Visitor Center, and the Kule Loklo Coastal Miwok Cultural Exhibit.

The second agenda item at this meeting will be a briefing on the Marin Agricultural Land Trust (MALT) Program. MALT is a private nonprofit membership land conservation organization established by a coalition of local ranchers and environmentalists to help protect and preserve Marin County's productive agricultural land. MALT acquires agricultural conservation easements by gift and purchase, provides technical information and assistance to landowners on land conservation techniques and alternatives and promotes public awareness of the importance of Marin County's agricultural land and the need to preserve it.

The third agenda item will be a presentation of the Environmental Assessment for Management of the Tule Elk. The Environmental Assessment addresses issues relating to

management of the elk herd which will be exceeding the carrying capacity of the land it now populates. The Preferred Alternative in the Environmental Assessment is to cull the herd using park ranger staff. A Draft Environmental Assessment on the Control of the Tule Elk Population at Point Reyes National Seashore was presented at two Point Reyes Committee meetings of the Advisory Commission, and the comments of the committee members were incorporated in the assessment which is released to the public.

Copies of the Environmental Assessment on the Control of the Tule Elk Population at Point Reyes National Seashore can be obtained by writing to Superintendent, Point Reyes National Seashore, Point Reyes, California 94956. Comments will be accepted through October 14, 1992.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after October 23, 1992. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: August 13, 1992.

W.H. Patton,

Acting Regional Director, Western Region.

[FR Doc. 92-20364 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-70-M

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings and public hearing for the Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), of the forthcoming scheduled meetings of the Vancouver Historical Study Commission. The next three monthly management meetings will be held on Tuesday, September 15, 1992, Tuesday, October 13, 1992, and Tuesday, December 8, 1992. The three meetings will be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington. Commission meetings are scheduled from 1 to 5 p.m.

The monthly management meetings are open to the public. Seating space and facilities at the Vancouver City Council Chambers to accommodate members of the public are somewhat limited, and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Commission a written statement concerning matters to be discussed. At the meeting, the public will be provided an opportunity to provide both written and verbal comment to the Commission. However, the Commission Chairman may restrict the length of public statements as necessary to allow the Commission to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. Keith Dunbar, Chief of Planning and Environmental Compliance, Pacific Northwest Region, National Park Service, 83 S. King St., Suite 212, Seattle, Washington 98104, or by telephone at (206) 553-4579.

Final approved Commission meeting minutes from the previous month will be available for public inspection approximately two months after each meeting in Park Headquarters, Fort Vancouver National Historic Site, 612 E. Reserve St., Vancouver, Washington 98661.

A public hearing will be held on Tuesday, November 17, 1992, from 7 to 10 p.m. The meeting will be held at the Wy' East Junior High School Auditorium, 1112 SE 136 Avenue, Vancouver, Washington. The hearing is to provide for public review and comment on the draft Vancouver National Historical Reserve Feasibility Study/Environmental Assessment for the Vancouver study area in accordance with Public Law 101-523.

The purpose of the public hearing is for the Vancouver Historical Study Commission to receive public comment on the draft Vancouver National Historical Reserve Feasibility Study report for Congress which, among other provisions, will make recommendations regarding:

(1) The preservation, protection, enhancement, enjoyment, and utilization of the historic, cultural, natural, and recreational resources of the Area,

(2) The feasibility of establishing a Vancouver National Historical Reserve,

(3) The continued operation of Pearson Airpark in a manner that will preserve and promote historic aviation and interpretation of the Area, and compatible with other historic and cultural resources of the Area, including Fort Vancouver National Historic Site. Copies of the draft Feasibility Study and Environmental Assessment can be viewed at the Fort Vancouver Regional Library and Park Headquarters Fort Vancouver National Historic Site beginning on Monday, November 2, 1992. Anyone wishing a copy of the draft Feasibility Study may request one by contacting, Fort Vancouver National Historic Site, 612 E. Reserve St., Vancouver, Washington 98661-3811 or by telephone at (206) 696-7655.

Comments on the draft Feasibility Study and Environmental Assessment should be addressed to: National Park Service, Fort Vancouver National Historic Site, 612 E. Reserve St., Vancouver, Washington 98661-3811.

Written public comment on the draft Feasibility Study will be received until Friday, December 4, 1992.

Dated: August 14, 1992.

William C. Watters,

Acting Regional Director.

[FR Doc. 92-20363 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-70-M

Meeting; Committee for Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 2 p.m., Friday, September 25, 1992. It is expected that the agenda will include discussion of policies, goals and refurbishing plans. The meeting will be open, but subject to appointment and security clearance requirements, including clearance information by September 18, 1992.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619-6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive SW., Washington, DC, 20242.

Dated: August 17, 1992.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 92-20393 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-329]

Global Competitiveness of U.S. Advanced-Technology Industries; Cellular Communications

AGENCY: International Trade Commission.

ACTION: Rescheduling of public hearing.

EFFECTIVE DATE: August 19, 1992.

SUMMARY: The Commission has rescheduled from January 20, 1993, to January 27, 1993, the public hearing in the above captioned investigation. The hearing will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on January 27, 1993. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, January 13, 1993. Any prehearing briefs (original and 14 copies) should be filed not later than noon, January 13, and any posthearing briefs should be filed by February 10.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

The investigation was instituted by the Commission on July 23, 1992, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt of a request on June 11, 1992, from the Senate Committee on Finance. Notice of institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of July 31, 1992 (57 FR 33971).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. Richard Brown (202-205-3438) or Ms. Susan Kollins (202-205-3441). For information on the legal aspects of this investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel (202-205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202-205-1107.

Issued: August 20, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92-20419 Filed 8-25-92; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 332-330]

Sulfanilic Acid; Probable Economic Effect of Removal From the List of Eligible Articles Under the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on August 5, 1992, from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332-330 in order that it might provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of sulfanilic acid, provided for in subheading 2921.42.24 of the Harmonized Tariff schedule, from eligibility for duty-free treatment under the Generalized System of Preferences (GSP).

In her letter the USTR said that the request was made following acceptance by the Trade Policy Staff Committee (TPSC) of a petition from R-M Industries, Inc., for expedited removal of sulfanilic acid from GSP.

As requested by USTR, the Commission will seek to provide its advice not later than October 5, 1992.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: With respect to information on the designated product, Mr. David Michels of the Commission's Office of Industries (202-205-3352); and for information on legal aspects of the investigation, Mr. William Gearhart of the Commission's Office of the General Counsel (202-205-3091).

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the investigation. Commercial or financial information that a party desires the Commission to treat as confidential must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6)—that is, it must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date and should be received no later than September 9, 1992. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-205-1810.

Issued: August 20, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-20418 Filed 8-25-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-309 and 731-TA-528 (Final)]

Magnesium from Canada

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Canada of magnesium,[3] provided for in subheadings 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Governments of Canada and Quebec and to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted countervailing duty investigation No. 701-TA-309 (Final), effective December 4, 1991, following a preliminary determination by the Department of Commerce that imports of pure and alloy magnesium from Canada were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). The Commission instituted antidumping investigation No. 731-TA-528 (Final), effective February 18, 1992, following a preliminary determination by the Department of Commerce that imports of pure and alloy magnesium from Canada were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale dissenting with respect to ultra-pure magnesium.

[3] The products covered by these investigations are pure and alloy magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Alloy magnesium contains less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and is sold in various ingot and billet forms and sizes. Excluded from the scope of the investigations are secondary magnesium and granular magnesium.

the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of December 26, 1992 (56 FR 66875), March 4, 1992 (57 FR 7790), and May 20, 1992 (57 FR 21429). The hearing was held in Washington, DC, on July 14, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 19, 1992. The views of the Commission are contained in USITC Publication 5220 (August 1992), entitled "Magnesium from Canada: Determinations of the Commission in Investigations Nos. 701–TA–309 and 731–TA–528 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: August 20, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–20420 Filed 8–25–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated July 7, 1992, and published in the **Federal Register** on July 14, 1992, (57 FR 31214), High Standard Products, 1100 West Florence Avenue, #B, Inglewood, California 90301, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Methadone (9250)	II
Morphine (9300)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 18, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–20386 Filed 8–25–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated June 11, 1992, and published in the **Federal Register** on June 22, 1992 (57 FR 27791), Smithkline Beecham Chemicals, Division of Smithkline Beecham Corporation, 900 River Road, Mail Stop L–11, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

No comments or objectives have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control At of 1970 and title 21, Code of Federal Regulations § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 18, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–20385 Filed 8–25–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Programs' Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1), notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee.

Time and Date: The meeting will begin at 9 a.m. on September 23, 1992 and continue until close of business that day; and will reconvene at 9 a.m. on September 24, 1992, and adjourn at 12 noon that day. The final hour of the meeting on September 23 will be reserved for participation and presentations by members of the public.

Place: Rooms 3437 B, C and D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: The meeting will be open to the public.

Matters To Be Considered: The agenda will focus on the most recent version of the Employment and Training Administration's (ETA) draft paper on enhancing the quality of the Section 401 program. The Committee's draft response to ETA's paper and any comments received from the grantee community on both papers will also be considered.

Contact Person for More Information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0500 (this is not a toll-free number).

Signed at Washington, DC 19 day of August, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92–20450 Filed 8–25–92; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment

Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20201.

Any complaints regarding attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and House Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-535-0163 (this is not a toll-free number).

Regarding the Compliant Process:

Questiens regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 188(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 7th day of August 1992.

Robert J. Litman,

Acting Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[07/01/92 TO 7/31/92]

CEO-Name/Facility Name/Address	State	Approval Date
Mr. Robert P. Atkinson, Jefferson Reg'l Med. Ctr., 1515 West 42nd, Pine Bluff, 71603, 501-541-7771	AR	07/09/92
Ms. Mary Anne Moreno, Miami-Inspiration Hospital, M-1 Miami Gardens, Miami, 85539, 602-425-3261	AZ	07/09/92
Ms. Judy Williams, Int'l Nurses Who Care, Inc., 1747 Brown Avenue, Woodland, 95695, 916-661-1493	CA	07/01/92
Mr. A. Jocson, Nursing Care Providers, Inc., 2419 Ocean Avenue, San Francisco, 94127, 415-469-0431	CA	07/01/92
Mr. Bruce Blomstrom, CliniShare Inc., 20600 Nordhoff Street, Chatsworth, 91311, 818-709-4221	CA	07/01/92
Mr. Kaldeep Brar, STAT Medical Services, Inc., 6430 Sunset Boulevard, Hollywood, 90028, 213-465-1134	CA	07/15/92
Mr. William A. Benbassat, Reliable Health Care Services, 5705 S. Sepulveda Blvd., Culver City, 90230, 310-397-2229	CA	07/15/92
Mr. Ephraim Barsam, Nursing Mgmt. Services (USA), 1875 Century Park East, Los Angeles, 90067, 310-553-6024	CA	07/15/92
Sr. Elizabeth Joseph Keaveney, St. Francis Med. Ctr., 3630 East Imperial Highway, Lynwood, 90262, 310-603-6085	CA	07/22/92
Mr. Suwaran Brar, White Cap Nursing Agency, 2500 Marconi Avenue, #108, Sacramento, 95821, 916-484-0144	CA	07/22/92
Mr. Les Beard, East Pointe Hospital, 1500 Lee Boulevard, Lehigh Acres, 33936, 813-369-2101	FL	07/02/92
Mr. Edward J. Goffinett, Metropolitan General Hospital, 7950 66th St. N., Pinellas Park, 45665, 813-546-9871	FL	07/02/92
Mr C. Scott Campbell, Highlands Reg'l Med. Ctr., P.O. Drawer 2066, Sebring, 33871, 813-385-6101	FL	07/09/92
Mr. Brian E. Keeley, Baptist Hospital of Miami, 8900 North Kendall Drive, Miami, 33176, 305-596-6585	FL	07/09/92
Ms. Judi Buxo, Harbour's Edge, 401 East Linton Boulevard, Delray Beach, 33483, 407-272-7979	FL	07/15/92
Mr. Louis Manzo, Bayshore Conval. Ctr., 16650 West Dixie Highway, North Miami, 33160, 305-945-7447	FL	07/15/92
Mr Richard S. Freeman, West Boca Medical Center, 21644 State Road #7, Boca Raton, 33428, 407-488-8000	FL	07/15/92
Mr. Tom E. Fitz, Palms of Pasadena Hospital, 1501 Pasadena Ave. South, Petersburg, 33707, 813-341-7774	FL	07/22/92
Mr R.B. Hubbard/T.H. Hill, Cobb Hospital & Medical Center, 3950 Austell Rd., Austell, 30001, 404-944-5030	GA	07/09/92
Mr. Edward J. Fechtel, Saint Mary's Hosp. of Athens, 1230 Baxter Street, Athens, 30606, 706-548-7581	GA	07/09/92
Ms. Yvonne Willis, Bowdon Area Hosp. & Rehab., 501 Mitchell Avenue, Bowdon, 30108, 404-258-7207	GA	07/22/92
Mr. Joseph G. Brum, Henry General Hospital, 1133 Eagle's Landing Parkway, Stockbridge, 30281, 404-389-2200	GA	07/22/92
Mr. Daryl Plager, Arcadia Retirement Residence, 1434 Punahou Street, Honolulu, 96822, 808-941-0941	HI	07/09/92
Mardith Wood, Greenwood Manor Conval. Ctr., 605 Greenwood Drive, Iowa City, 52246, 319-338-7912	IA	07/31/92
Mr. Tali Tzur, Maple Hill Nursing Ctr., Inc., Box 2308 R.F.D., Long Grove, 60047, 708-438-8275	IL	07/01/92
Mr. Gary L. Callahan, Loretto Hospital, 645 South Central Avenue, Chicago, 60644, 312-626-4300	IL	07/01/92
Mr. Taliz Tzur, Royal Terrace Healthcare Ctr., 803 Royal Drive, McHenry, 60050, 815-344-2600	IL	07/01/92
Mr. Sidney Glenner, Glen Oaks Nursing Home, Inc., 270 Skokie Hwy., Northbrook, 60062, 708-498-9320	IL	07/02/92
Mr. Sidney Glenner, Glen Crest Nursing & Rehab. Ctr., 2451 W. Touhy, Chicago, 60646, 312-338-6800	IL	07/02/92
Mr. Sheldon Wolfe, Fox Valley Healthcare Center, 759 Kane Street, South Elgin, 60177, 708-697-3310	IL	07/02/92
Mr. Sidney Glenner, Elston Nursing Home, 4340 No. Keystone, Chicago, 60641, 312-545-8700	IL	07/02/92
Mr Robert Nataupsky, Walnut Ridge Healthcare & Reh Ctr., Inc., Springfield, 62702, 217-525-1880	IL	07/09/92
Mr Sam Gorenstein, Metro. Nursing Ctr. of Oak Park Inc., Oak Park, 60302, 708-848-5966	IL	07/09/92
Mr Morris Esformes, Bourbonnais Terrance, 133 Mohawk Drive, Bourbonnais, 60914, 815-937-4790	IL	07/09/92
Mr Sam Gorenstein, Metro. Nursing Ctr. of Elgin, 50 N. Jane Drive, 60123, 708-697-3750	IL	07/09/92
Mr Sam Gorenstein, Metro. Nursing Ctr. of Joliet, 222 N. Hammes, Joliet 60435, 815-715-9443	IL	07/15/92

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[07/01/92 TO 7/31/92]

CEO-Name/Facility Name/Address	State	Approval Date
Mr. Tali Tzur, Wellington Plaza Nursing Ctr., 504 W. Wellington, Chicago, 60657, 312-281-6200	IL	07/15/92
Mr. Sam Gorenstein, Edgewater Nursing & Geriatric, 5838 N. Sheridan Road, Chicago, 60660, 312-769-2230	IL	07/16/92
Mr. Malka Mermelstein, Lake Front Healthcare Ctr., I, 7618 N. Sheridan, Chicago, 60626, 312-743-7711	IL	07/22/92
Mr. Peter Rogan, Edgewater Medical Center, Edgewater Operating Co.:d/b/a Chicago, 60660, 312-878-6000	IL	07/22/92
Mr. John Harper, South Shore Hospital, 8012 S. Crandon Avenue, Chicago, 60617, 312-768-0810	IL	07/23/92
Mr. Charles E. Windsor, St. Mary's Hospital, Inc., 129 North 8th Street, East St. Louis, 62201, 618-274-1900	IL	07/31/92
Mr. John Gracey, Lemuel Shattuck Hospital, 170 Morton Street, Jamaica Plain, 02130, 617-522-8110	MA	07/01/92
Mr. L. Barney Johnson, Harbor Hospital Ctr., 3001 South Hanover Street, Baltimore, 21225, 410-347-3566	MD	07/09/92
Mr. Paul L. Broughton, Harper Hospital, 3990 John R. Street, Detroit, 48201, 313-745-9053	MI	07/29/92
Mr. Richard L. Myers, Durham County Hospital Corp., 3643 N. Roxboro Rd., Durham, 27704, 919-470-7267	NC	07/22/92
Mr. Michael E. Gilstrap, Halifax Memorial Hospital, P.O. Box 1089, Roanoke Rapids, 27870, 919-535-8011	NC	07/31/92
Mr. A. Jason Geisinger, Greenbriar Terrace Healthcare, The Hillhaven Corporation, Nashua, 03062, 603-888-1573	NH	07/09/92
Mr. R.C. Lemire, Epsom Manor, R.C. Lemire Enterprise, Inc., dba Epsom, 03234, 603-736-4772	NH	07/16/92
Ms. Janice Marchelle, Whiting Healthcare Center, 3000 Hilltop Road, Whiting, 08759, 908-849-4400	NJ	07/01/92
Mr. George Cannata, Dover Christian Nursing Home, 65 N. Sussex Street, Dover, 07801, 201-361-5200	NJ	07/01/92
Mr. Ulrich J. Rosa, St. Francis Hospital, Franciscan Health System of NJ., Inc., Jersey City, 07302, 201-714-8900	NJ	07/02/92
Mr Ulrich Rosa, St. Mary Hospital, Franciscan Health System of NJ., Inc., Hoboken, 07030, 201-714-8900	NJ	07/02/92
Ms. Elizabeth Miller, Burnt Tavern Conval. Center, 1049 Burnt Tavern Rd., Brick, 08724, 908-840-3700	NJ	07/02/92
Ms. Kay Henning, Northfield Manor Conval. Home, 787 Northfield Avenue, West Orange, 07052, 201-731-4500	NJ	07/09/92
Mr. Robert Zupa, CentraState Medical Center, West Main Street, Freehold, 07728, 908-431-2000	NJ	07/31/92
Mr. William Watt, St. Joseph's Hospital Health, 301 Prospect Avenue, Syracuse, 13203, 315-448-5836	NY	07/01/92
Mr. John S.T. Gallagher, North Shore University Hosp., 300 Community Drive, Manhasset, 11030, 516-562-0100	NY	07/23/92
Mr. Stanley F. Hupfeld, Baptist Med. Ctr. of Oklahoma, 3300 Northwest Expwy., Oklahoma City, 73112, 405-949-3112	OK	07/02/92
Mr. James Seward, Hillside Hospital, 1265 E. College Street, Pulaski, 38478, 615-363-7531	TN	07/09/92
Mr. Duane K. Rossmann, Doctors Hospital, 3205 West Davis, Conroe, 77304, 409-756-0631	TX	07/01/92
George A. Hurst, M.D., The U. of Texas Health Ctr., Highway #271 No. 155, Tyler, 75710, 903-877-7740	TX	07/09/92
Mr. Kenneth Jewell, Sweetbriar Nursing Home, 401 Horton, Brenham, 77833, 409-836-6611	TX	07/09/92
Mr. Thomas B. Symonds, Mission Hospital, 900 South Bryan Road, Mission, 78752, 512-580-9000	TX	07/22/92
Mr. Luis G. Silva, AMI Hospitals of Texas, LTD., P.O. Box 1648, Port Arthur, 77641, 409-985-0470	TX	07/22/92
Mr. William Burns, HCA Rio Grande Regional Hosp., 101 E. Ridge Road, McAllen, 78503, 512-632-6000	TX	07/31/92
Mr. A. Jason Geisinger, Birchwood Terrace Healthcare, The Hillhaven Corporation, Burlington, 05401, 802-863-6384	VT	07/01/92
Total Attestations: 67		

[FR Doc. 92-20451 Filed 8-25-92; 8:45 am]

BILLING CODE 4510-30-M

LEGAL SERVICES CORPORATION

Grant Award for Provision of Civil Legal Services Needs of Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a grant to provide civil legal assistance to LSC-eligible migrant farmworker clients in Mississippi. Pursuant to the Corporation's announcement of funding availability published in 56 FR 10577 (March 13, 1991), a total of $125,250 will be awarded to Central Mississippi Legal Services.

This one-time, non-recurring grant is awarded pursuant to authority conferred by section 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will become effective and grant funds will be distributed only after expiration of this 30-day period.

DATES: All comments and recommendations must be received on or before 5 p.m. on September 25, 1992.

ADDRESSES: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Ressie Walker, Grants Specialist, Grants & Budget Division, Office of Field Services, (202) 336-8826.

Dated: August 24, 1992.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 92-20620 Filed 8-25-92; 8:45 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: Simulation Facility Certification.
3. The form number if applicable: NRC Form 474.
4. How often the collection is required: One time requirement.
5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.
6. An estimate of the number of responses: 10 annually.
7. An estimate of the total number of hours needed to complete the requirement or request: 1200 annually (approximately 120 hours per response).
8. An indication of whether Section 3504(h), Public Law 96-511 applies: Not applicable.
9. Abstract: Licensed power facilities which propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing

operating tests are to submit NRC Form 474.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0138), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92-20430 Filed 8–25–92; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 36).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR part 61—Licensing Requirements for Land Disposal of Radioactive Waste
3. The form number if applicable: Not applicable.
4. How often the collection is required: Applications for licenses are submitted once. Applications for renewals or amendments are submitted as needed. Other reports are submitted annually and as other events require.
5. Who will be required or asked to report: Applicants for and holders of an NRC license for land disposal of low-level radioactive waste.
6. An estimate of the number of responses: 91.
7. An estimate of the total number of hours needed to complete the requirement or request: The average burden is estimated to be approximately 153 hours per response, and 3,040 recordkeeping hours per licensee for two licensees annually. The total industry burden is estimated to be 20,020 hours annually.
8. An indication of whether section 3504(h) Public Law 96–511 applies: Not applicable.
9. Abstract: 10 CFR part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. The information collected in the applications, reports and records is evaluated by the NRC to ensure that the licensee's or applicant's physical plant, equipment, organization, training, experience, procedures and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0135), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 18th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92-20431 Filed 8–25–92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270, 50-287]

Duke Power Co., Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specification (TS) to allow a one-time extension of outage time to 7 days for a single string of the switchyard 125-volt dc (VDC) batteries to be inoperable to permit the replacement of the 59-cell battery with a new 60-cell battery.

The proposed action is in accordance with the licensee's application for amendment dated May 20, 1992.

The Need for the Proposed Action

The proposed changes to the TS are required to allow replacement of switchyard 125 VDC batteries which are nearing end-of-life.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revision would allow one string of 125 VDC batteries to be inoperable for 7 days during the battery replacement. The other string of 125 VDC batteries and several other sources of emergency power would remain available. Therefore, the probability of accidents would be only slightly increased, and the consequences of the accidents are within the bounds of those analyzed in the FES for operation. After the modification, the probability of accidents will be reduced due to increased reliability. Also, no changes are being made in the types of any effluents that may be released offsite and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

Although the proposed changes to the TS involve systems not located within the restricted area as defined in 10 CFR part 20, there are no environmental effects. These changes do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 24, 1992 (57 FR 28199). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would prevent implementation of the modification which would provide increased reliability of the overhead emergency power path.

Alternative Use of Resources

The proposed amendments do not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Oconee Nuclear Station, Units 1, 2, and 3 dated March 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 20, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20932 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Plant Operations; Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on September 9, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 9, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the NRC staff and industry programs to address the issue of risk from low power/shutdown operations at U.S. nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. (e.s.t.). persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 19, 1992.

M. Dean Houston,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 92-20404 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 9, 1992, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

Wednesday, September 9, 1992—3 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492-4516) between 7:30

a.m. and 4:15 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 19, 1992.

Richard Savio,

Assistant Executive Director for Nuclear Reactors and Nuclear Waste.

[FR Doc. 92-20403 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

Holders of Operating Licenses or Construction Permits for Nuclear Power Plants; Receipt of Petition for Director's Decision Under 10 CFR 2.206 Regarding the Use of Thermo-Lag 330 Fire Barrier Material

Notice is hereby given that the Nuclear Information and Resource Service and other organizations (Petitioners) have submitted to the U.S. Nuclear Regulatory Commission (NRC) on July 21, 1992, as supplemented by the addenda of August 12, 1992, a Petition pursuant to 10 CFR 2.206. Joining with the Nuclear Information and Resources Service in filing the Petition are the Alliance for Affordable Energy, Citizens Organized to Protect our Parish, Citizens for Fair Utility Regulation, Don't Waste New York, Citizens Against Radioactive Dumping, Coalition for Alternatives to Shearon Harris, Conservation Council for North Carolina, Safe Energy Coalition of Michigan, Steve Langdon, Essex County Citizens Against Fermi-2, Natural Guard, and Northwest Environmental Advocates.

The Petitioners alleged a number of deficiencies with Thermo-Lag material including failure of Thermo-Lag fire barriers during 1- and 3-hour fire endurance tests, deficiencies in procedures for installation, nonconformance with NRC quality assurance and qualification test regulations, the combustibility of the material, ampacity miscalculations, the lack of seismic tests, the failure to pass hose stream tests, the high toxicity of substances emitted from the ignited material, and the declaration by at least one utility, Gulf States Utilities Company, of the material as inoperable at its River Bend Station. The Petition also alleged that fire watches cannot substitute for an effective fire barrier indefinitely and that the NRC staff has not adequately analyzed the use of fire watches.

Based on these allegations, the Petitioners request that the NRC immediately suspend the operating licenses for the River Bend, Comanche Peak Unit 1, Shearon Harris, Fermi-2, Ginna, WNP-2, and Robinson facilities pending a demonstration that the facilities meet NRC fire protection requirements. The Petitioners also request the issuance of an order to stop the installation of Thermo-Lag a Comanche Peak Unit 2 or a suspension of the facility's construction permit. The Petitioners seek the NRC to issue a generic letter before September 5, 1992, requiring licensees to submit information to the NRC demonstrating compliance with fire protection requirements. Where facilities cannot demonstrate compliance, the Petitioners request immediate suspension of the operating licenses for the affected facilities until such time as compliance with NRC protection requirements can be shown. In a letter of August 19, 1992, I have determined that immediate action is not necessary regarding the matters raised in the Petition.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by 10 CFR 2.206, the NRC will take appropriate action on the specific issues raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20433 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8084]

Rio Algom Mining Corp., Lisbon Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA-1119 for the Lisbon Facility to incorporate reclamation schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-1119, Rio Algom Mining Corp., Lisbon Facility, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires October 13, 1992.

ADDRESSES: Copies of the response from Rio Algom Mining Corp. and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street Suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO, 20555.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that Rio Algom Mining Corp. submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided responses on November 22, 1991, and July 10, 1992.

The proposed schedule calls for placement of the final cover by December 31, 1996, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation schedule and determined that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA-1119 to incorporate the schedules proposed by the licensee by adding License Condition No. 55 as follows:

55. The licensee shall complete site reclamation in accordance with an approved reclamation plan. The ground-water corrective action plan shall be conducted as authorized by License Condition No. 53 in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—September 30, 1993.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—December 31, 1992.

(3) Placement of a final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m2/s above background—December 31, 1996.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40—December 31, 2015.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 2015.

C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in Section B above must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colo., this 18th day of August 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-20434 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[Rescission of Office of Management and Budget (OMB) Circular No. A-18]

Policies on Construction of Family Housing, Dated October 18, 1957

AGENCY: Office of Management and Budget.

ACTION: The Office of Management and Budget (OMB) has rescinded Circular No. A-18, Policies on Construction of Family Housing, dated October 18, 1957.

SUMMARY: Pursuant to OMB's simplification of its system of circulars, the general policy provisions of OMB Circular No. A-18 have been incorporated in the revised version of OMB Circular No. A-11, Preparation and Submission of Annual Budget Estimates, dated July 2, 1992. The remaining provisions of Circular No. A-18 will be incorporated into OMB Circular No. A-45, Policy Governing Charges for Rental Quarters and Related Facilities, March 28, 1984. This circular is currently under revision and the revised version is to be published soon.

DATE: The effective date of this action is the date of the OMB Circular No. A-18 Transmittal Memorandum No. 2.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395-7209.

SUPPLEMENTARY INFORMATION: Notice of this action was given in 56 FR 49,824 on October 1, 1991.

Dated: August 19, 1992.

Allan V. Burman,

Administrator.

[FR Doc. 92-20409 Filed 8-25-92; 8:45 am]

BILLING CODE 3110-01-M

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

SUMMARY: The Presidential Commission on the Assignment of Women in the Armed Forces will hear testimony August 27th through August 29th in Dallas, Texas. Presentations will be made by experts on sociological and cultural issues, theologians, and representatives from the Army, Navy, and Marines, on policies pertaining to the assignment of women in the military. Additionally, panels of the Commission's four Fact Finding Panels will meet in Dallas to discuss women's roles in the Armed Forces.

Location: Fairmont Hotel/Parisian Room-Banquet Level At the Dallas Arts District, 1717 North Akard Street, Dallas, Texas 75201, (214) 720-2020.

Dates: Thursday, August 27th & Friday August 28th 8 a.m. to 5:30 p.m./General Session Saturday, August 29th 8 a.m. to 9:15 a.m./General Session 9:30 a.m. to 12 p.m./panel meetings (rooms to be announced)

Note: In addition to the Dallas hearing, the Presidential Commission on the Assignment of Women in the Armed Forces has scheduled the next hearing in Washington, D.C. Please call the Commission office for further details.

Status: Open to Public.

Contact: Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin Kirk, (202) 376-6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102-190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W. S. Orr,

Staff Director.

[FR Doc. 92-20424 Filed 8-25-92; 8:25 am]

BILLING CODE 6820-CD-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31049; File No. S7-29-92]

Options Price Reporting Authority; Filing and Immediate Effectiveness of Amendment to the OPRA Plan Revising Certain Access Fees

August 17, 1992.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 27, 1992, the Options Pricing Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan") for the purpose of revising certain access fees charged by OPRA.

OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all the OPRA participants in connection with access to or use of OPRA facilities,

permitting it to become effective upon filing, pursuant to the terms of Rule 11Aa3–2(c)(3)(i) under the Act. OPRA, however, does not intend to put the new fees into effect until September 1, 1992, in order to provide notice to persons subject to the fees. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to increase the fees charged by OPRA to persons who receive a bulk, data-feed transmission of current options market information by means of direct or indirect access to OPRA's central processor, the Securities Industry Automation Corporation ("SIAC"). This fee increase is necessitated by recent and scheduled increases in OPRA's expenses, including very substantial increases in the processor charges imposed by SIAC.

Pursuant to its agreements with vendors, new services and direct-connect subscribers, the access fees charged by OPRA to these persons are established at a level that permits the recovery of OPRA's operating costs (*i.e.*, costs imposed by SIAC for its services as OPRA's central processor, as distinguished from system development costs, OPRA's general overhead and administration costs, and costs incurred by participant exchanges in collecting current options market information and transmitting it to OPRA's central processor). These access fees are adjusted at least annually by dividing OPRA's total processor costs by the number of persons paying these fees. At the time of the last review in September 1991, total monthly processor costs were $71,000, which, divided by the 50 persons then paying these fees, resulted in the current monthly access fee of $1,400.

During 1992, major additions and improvements have been and will be made by SIAC, at OPRA's request, to the facilities dedicated to performing the central processor function for OPRA, each of which will cause SIAC's processor costs to increase. The most significant of these changes, and the one that will account for most of the cost increase (approximately 70% of the increase) is the implementation by SIAC of an independent, back-up, second site facility, made at OPRA's request in response to concerns raised by the General Accounting Office and the Commission in order to assure uninterrupted operation of the OPRA system in the event of a major catastrophe at SIAC's primary site. In addition, SIAC has provided for a substantial increase in OPRA's message handling capacity—from a maximum capacity of 150–160 messages per second to 240–300 messages per second—in order to accommodate significantly greater projected message traffic and to prevent bottlenecks in the OPRA network, and a major upgrade of the computer equipment used to process OPRA data. Reflecting these additions and improvements to SIAC's facilities, OPRA's monthly processor costs will soon increase by almost 100% (from $71,000 to $139,000) when price changes scheduled for the third and fourth quarter of 1992 are put into effect by SIAC.

In order to be able to recover these increases in processor charges from the access fees paid by vendors, news services and direct-connect subscribers, OPRA proposes to increase these fees to $2,800 per month, which is somewhat less than the amount that results by dividing the new, higher processor charges by the 48 persons currently paying these fees.

OPRA also proposes to increase the access fee paid by indirect data-feed subscribers, who receive data-feed directly from OPRA's central processor. This fee was initially established several years ago at the nominal rate of $100 per month, in order to recover a portion of the higher costs of administration associated with this category of subscribers. In order more fairly to allocate a greater share of OPRA's costs to this category of data-feed subscribers, taking into account the higher access fees proposed to be charged to vendors, news services and direct-connect subscriber, OPRA proposes to increase this fee to $600 per month.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to the file number in the caption above and should be submitted by September 16, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20387 Filed 8–25–92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31011; File No. SR–CSE–92–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange Relating to the Preferencing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

August 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), on July 27, 1992, the Cincinnati Stock Exchange (the "CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is granting accelerated approval of, and publishing this notice to solicit comments from interested persons on, the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will extend for nine months the CSE's preferencing rule pilot, which the Commission approved temporarily on February 7, 1991, and which was most recently

extended on February 7, 1992, and modified on June 15, 1992.[1] The preferencing rule, as amended, modifies the Exchange's time priority rules to permit a market maker to act as Dealer of the Day and have priority over same-priced market maker or professional agency interest entered prior in time to his bid or offer when the market maker is interacting with public agency market and marketable limit orders which he represents as agent.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items V below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CSE has sought in various ways, outlined in its initial rule filing, to increase the amount of retail business transacted on the Exchange.[2] As noted in the Commission's February 1991 order initially approving the preferencing pilot, the CSE's preferencing proposal is an attempt to achieve improvements in efficiency and liquidity of CSE-traded securities.[3] Although CSE share volume attributable to preferencing has increased since its introduction in April 1991, the great majority of the Exchange's total share volume continued, as of June, 1992, to be nonpreferenced trading. The CSE is requesting another extension of the preferencing pilot so that the Exchange and the Commission can continue to evaluate the impact of preferencing on the national market system. To expand the pilot in a controlled manner with ample opportunity for Commission review, the Exchange also proposes to increase the number of issues any one Dealer may preference from 250 to 350.

Originally, to prevent the use of preferencing to facilitate program trading, the CSE agreed to limit to 60 the number of issues that a Designated Dealer could preference.[4] On October 31, 1991, and June 15, 1992, the Commission issued orders granting CSE requests to increase the limit on the number of issues a Designated Dealer could preference from 60 to 125, and from 125 to 250.[5] As a condition, however, of granting these orders, the CSE agreed to provide the Commission with the following information: (1) A list indicating how many Designated Dealers are preferencing in more than sixty issues; (2) a list identifying, in each such case, the issues being preferenced; and (3) reports indicating the volume of preferenced trades in each issue. Further, the CSE agreed that, if the Commission so requested, it would provide available information relating to specific time intervals, and that it would not use dealer preferencing for index arbitrage purposes until permitted by the Commission.[6]

The proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, furthers the objective of section 6(b)(5) because it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange solicited comments on the proposed rule change from other Intermarket Trading System participants prior to its initial filing.[7]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated approval pursuant to section 19(b)(2). The Exchange believes that the issues raised by this filing were addressed prior to the initiation of the preferencing pilot, and experience under the pilot has raised no new issues. Moreover, the CSE wishes to continue its preferencing program without interruption to participating dealers.

IV. Discussion

The Commission finds that the proposal to extend the CSE's preferencing rule for nine months, and to increase the limit on the number of issues any one Dealer may preference to 350, is consistent with the Act and the rules and regulations thereunder applicable to the Exchange. Specifically, extension of the pilot and expansion of the number of eligible securities will enable the CSE to conduct a broader study of the effect of preferencing. Approval, however, is contingent upon the CSE abiding by the conditions set out above and to providing the information described above. In this regard, by May 7, 1993, the CSE will provide: (1) The CSE's list indicating the Designated Dealers that are preferencing in more than sixty issues; (2) a list identifying, in each such case, the issues being preferenced; and (3) reports indicating the volume of preferenced trades in each such issue. Approval also is conditioned upon the CSE providing the Commission, for each moth of the pilot program, with information on the total preferenced share and transaction volume and what percentage of total CSE share and transaction volume the preferenced volume represents.

The Commission finds good cause for approving the extension of the pilot for an additional nine months and increasing the limit on the number of issues any one dealer may preference from 250 to 350, upon termination of the extension of the pilot on August 7, 1992, which is prior to the thirtieth day after the date of publication and notice of filing. The Commission believes that accelerated approval will help the CSE continue its preferencing program without interruption to participating dealers. The Commission also believes that accelerated approval will help the CSE to continue to expand the pilot in a controlled manner with greater opportunity for Commission review.

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[1] See Securities Exchange Act Release Nos. 30353 (Feb. 7, 1992), 57 FR 5918; and 30809 (June 15, 1992), 57 FR 27990. See also Securities Exchange Act Release Nos. 28866 (Feb. 7, 1991), 56 FR 5854; 29524 (Aug. 5, 1991), 56 FR 38180; and 29885 (Oct. 30, 1991), 56 FR 56676.

[2] See Securities Exchange Act Release No. 28866 (February 7, 1991), 56 FR 5854.

[3] *Id.*

[4] *Id.*

[5] See Securities Exchange Act Release Nos. 29885 (October 30, 1991), 56 FR 56676; and 30809 (June 15, 1992), 57 FR 27990.

[6] *Id.* To date, the CSE has provided the Commission with confidential information regarding the number of Designated Dealers preferencing in more than sixty issues, the total preferenced share and transaction volume, and what percentage of total share and transaction volume the preferenced volume represents.

[7] See File No. SR-CSE-90-6.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commissions, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above (see also Files SR–CSE–90–06, 91–03, –92–01, –92–04) and should be submitted by September 16, 1992.

VI. Conclusion

Based on the foregoing, the Commission has concluded that the proposal to extend the pilot for nine months and increase the limit on the number of issues any one Dealer may preference from 250 to 350, is consistent with the requirements of the act and that it is appropriate to approve the proposal.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposal to extend the pilot for a nine-month period until May 7, 1993, commencing upon termination of the extensions of the original pilot, on August 7, 1992, and to increase the limit on the number of issues any one Dealer may preference from 250 to 350, be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20390 Filed 8–25–92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 17, 1992.

On August 3, 1992, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.,* a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–8890	ADPT	Adaptec, Inc., Common Stock, $.001 par value.

The above-referenced issue is being applied for as a replacement for the following security for which OTC/UTP application was made on July 14, 1992.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issue:

File No.	Symbol	Issuer
7–8891	TSQM	T² Medical, Inc., Common Stock, $.01 par value.

A replacement issue is being requested as the common stock of T² Medical, Inc. will be listed on the New York Stock Exchange, rendering it ineligible for the OTC/UTP program.

Comments

Interested persons are invited to submit, on or before September 7, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20388 Filed 8–25–92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31048; File No. SR–NYSE–92–03]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendment To Rule 411(b) Regarding the Entry of Odd-Lot Orders

August 18, 1992.

I. Introduction

On February 20, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the entry of odd-lot orders on the Exchange.

The proposed rule change was noticed in Securities Exchange Act Release No. 30453 (March 9, 1992), 57 FR 9299 (March 17, 1992). No comments were received on the proposal.

II. Description of the Proposal

Pursuant to current Rule 411(b), when a person enters multiple odd-lot orders in the same stock which aggregate to 100 shares or more, and such person enters these orders for his own account or for accounts in which he has an actual monetary interest, he is obligated to aggregate such orders into round-lots where possible for execution in the round-lot auction market. Conversely, if the multiple odd-lot orders are entered at the same time by a person who merely manages, or makes investment decisions for, a number of accounts, current Rule 411(b) does not require the aggregation of such orders into round-lots.

The Exchange believes that the aggregation obligation applicable to persons who enter odd-lot orders for their own accounts, or for accounts in which they have a monetary interest, should apply equally to persons making a single investment decision as to the entry of multiple odd-lot orders for accounts over which they have investment discretion. For example, a money manager may make a single investment decision on behalf of multiple managed accounts which involve the purchase or sale of hundreds or thousands of shares utilizing odd-lots in the same security. The Exchange states that in the absence of an aggregation requirement, such orders are not exposed to the auction market,

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

even though the orders may total multiple round-lots, and even though there may be contra side buying or selling interest in the round-lot market.[3]

The proposed amendment to Rule 411(b), however, would provide an exception to the proposed aggregation requirement. Under the exception, odd-lot orders which total less than 300 shares entered by a person with investment discretion over multiple accounts would not be required to be aggregated. This exception could be utilized once per training day by any person exercising investment discretion.[4]

III. Commission's Findings and Conclusion

After careful consideration, the Commission finds that the NYSE's proposed rule change to apply the current aggregation obligations set forth in Rule 411(b) to persons making a single investment decision as to the entry of multiple odd-lot orders for accounts over which they have investment discretion is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. More specifically, the Commission believes that the amendments are consistent with the section 6(b)(5) [5] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Commission believes that a transaction involving the entry of odd-lot orders for accounts in which a person has investment discretion is substantially similar to a transaction in which such person enters these odd-lot orders for his own account or for accounts in which he has a monetary interest. In such situations, investment advisers often are making a single investment decision in regard to all the accounts they manage which results in the entry of multiple odd-lot orders. Taken individually, the odd-lot orders are not eligible for auction market trading, but viewed as a whole, as individual parts of one investment decision, such orders should be aggregated into round-lots just as if these orders had been initially entered as one round-lot transaction. Because the entry of such odd-lot orders can be viewed as one investment decision, therefore, the Commission believes that these orders should be subject to the same auction market trading principles applicable both to multiple odd-lot orders entered by a person for his own account or for an account in which he has a monetary interest, and to round-lot transactions.

The Commission believes, however, that the exception to the proposed Rule 411(b) consolidation requirement for odd-lot orders which total less than 300 shares also is consistent with the Act. This exception, allowed only once per trading day to persons exercising investment discretion over accounts, should enable a person who infrequently enters such multiple odd-lot orders from being subject to the rules applicable to the round-lot market. The Commission believes that this exception is appropriate because persons with investment discretion over a small number of accounts who enter multiple-odd lots for *de minimis* amounts should not be required to enter such orders in the auction market. Such a requirement could prove overburdensome given the infrequency of order entry and the *de minimis* amount of such trades. Thus, the Commission believes that it is appropriate to exempt these *de minimis* transactions, once per trading day, from the proposed odd-lot aggregation requirements set forth herein.

For the reasons set forth above, the Commission has determined to approve the NYSE's proposed rule change. The Exchange's auction market trading system for round-lot orders provides a live forum for the convergence between the supply of and demand for a security. While most odd-lot orders currently receive the Best Pricing Quote ("BPQ") in the national market system,[6] the proposal would provide an opportunity for the aggregated orders to receive a better price through the use of the NYSE's auction market system. In addition, the proposal should result in enhancing liquidity on the NYSE by bringing more orders down to the floor to interact with each other. Because the Commission believes that auction market trading increases the overall efficiency of the marketplace by providing numerous benefits to market participants such as narrower quotes and better, more accurate prices, the Commission supports the NYSE's initiative to make auction market trading principles applicable to the additional situations involving the entry of multiple odd-lot orders by a person exercising investment discretion over multiple accounts.

It is Therefore Ordered, Pursuant to section 19(b)(2) [7] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20369 Filed 8-25-92; 8:45 am]

BILLING CODE 8010-01-M

[3] Generally, odd-lot orders that are transmitted for execution to a NYSE member organization or its agent engaged in the odd-lot business are executed automatically at the price of the adjusted Intermarket Trading System ("ITS") bid (in the case of an order to sell) or adjusted ITS offer (in the case of an order to purchase) in the security at the time the order is received by the Exchange's odd-lot system. See NYSE Rule 124 for further information regarding the method of executing odd-lot orders on the Exchange.

[4] Subsequent to the notice of this proposal appearing in the Federal Register, the NYSE amended the language of the proposed rule change to clarify that this exception applies to orders entered by someone known to have investment discretion over multiple accounts, and is not applicable to those individuals who enter odd-lot orders for their own accounts, or for accounts in which they have a monetary interest. These individuals still must aggregate multiple odd-lot orders of 100 shares or more into round-lots where possible. See letter from Brian M.M. McNamara, Managing Director, Market Surveillance, NYSE, to Laurie Petrell, Division of Market Regulation, SEC, dated June 29, 1992.

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19407 (May 9, 1990) (Order approving File No. SR-NYSE-90-06).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30-3(a)(12) (1991).

DEPARTMENT OF STATE

[Public Notice 1679]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Carriage of Dangerous Goods; Meeting

The Working Group on Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on October 8, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 44th Session of the Subcommittee on the Carriage of Dangerous Goods of the International Maritime Organization (IMO) which is scheduled for October 19-23, 1992, at the IMO Headquarters in London. The agenda items include:

a. Amendments to the International Maritime Dangerous Goods (IMDG) Code.

b. Amendments to the IMDG Code for harmonization with The United Nations Recommendations on the Transport of Dangerous Goods.

c. Amendments to section 13 of the General Introduction to the IMDG Code

to cover transport in tanks of solid dangerous substances including molten substances in solidified form, and the transport of dangerous substances under heated conditions.

d. Implementation of the IMDG Code.

e. Development of criteria for the hermetic sealing of receptacles, packages and Intermediate Bulk Containers.

f. Development of new glossary and illustrations of packaging for Annex I to the IMDG Code.

g. Revision of Class 4.1, self-reactive [and related] substances.

h. Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods (EmS) and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

i. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended, and amendments to the IMDG Code to cover pollution aspects.

j. Establishment of criteria for immersion testing of packages containing marine pollutants for the purposes of Annex III of MARPOL 73/78.

k. Matters relating to SOLAS regulations II–2/53 and 54.

l. Requirements for ships' stores of a hazardous nature.

m. Transboundary movement of wastes by sea.

n. Relations with other organizations.

o. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

p. Updating of the Recommendations on the Safe Transport, Handling and Storage of Dangerous Substances in Port Areas.

q. Review of existing ships' safety standards.

r. Role of the human element in maritime casualties.

s. Use of radio beacons on containers and packages.

t. Criteria for inclusion of substances in the list annexed to the 1973 Protocol.

u. Stowage and segregation in open-top container ships.

v. Requirements for the safe carriage of irradiated nuclear fuel (INF).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K. J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: August 17, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–20416 Filed 8–25–92; 8:45 am]

BILLING CODE 4710-7-M

[Public Notice 1680]

Shipping Coordinating Committee, Subcommittee on Standards of Training and Watchkeeping, Meeting

The Shipping Coordinating Committee (SHC) will conduct open meetings at 9:30 a.m. on October 28, 1992, and on January 26, 1993, in room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meetings is to review the agenda items for the twenty-fourth session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW), scheduled for March 8–12, in London.

These SHC meetings will also include a review of the matters to be discussed by the Joint International Maritime Organization and International Labor Organization (IMO/ILO) Group of Experts on Fatigue which will meet concurrently with the twenty-fourth session of STW to consider matters relating to the investigation of marine accidents in which fatigue may be a contributing factor.

Items of particular interest on the agenda for the twenty-fourth session of STW include:

—Fatigue factor in manning and safety
—Draft Protocol to the International Convention on Standards of Training Certification and Watchkeeping for Seafarers, 1978 (STCW) on the training and certification of crews of fishing vessels
—Officer of the navigational watch acting as the sole look-out in periods of darkness
—Role of the Human Element in Maritime Casualties (including on-board communication problems)
—Special training requirements for personnel on tankers
—Training in cargo stowage and securing
—International eyesight standards
—Simulator training
—Drug and alcohol abuse
—Minimum training requirements for personnel nominated to assist in emergency situations on passenger ships
—Training and qualifications for personnel responsible for repairs and maintenance of on-board electrical installations
—Training of all personnel on mobile offshore units (MOUs)
—Incorporation of modern training and certification arrangements in the STCW Convention
—Safe and efficient bridge procedures
—Issuance of GMDSS radio operator certificates to holders of non-GMDSS certificates
—Training for vital systems failures.

The Joint IMO/ILO Group of Experts which was established to draw up a uniform framework of procedures for the investigation of marine accidents to identify the extent to which fatigue was a contributory factor will hold its second meeting concurrently with STW.

The SHC meeting in October will focus primarily on the following subjects: Fatigue; officer of the navigational watch acting as the sole look-out in periods of darkness; the human element; special training for personnel on tankers; international eyesight standards; drug and alcohol abuse; training of personnel responsible for maintenance of on-board electrical installations; bridge procedures; and incorporation of modern training and certification arrangements in the STCW Convention.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: August 14, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–20915 Filed 8–25–92; 8:45 am

BILLING CODE 4710-7-M

Office of Defense Trade Controls

[Public Notice 1678]

Rescission of Suspended Exports Regarding Delft Instruments, N.V. and Related Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Public Notice 1354, effective January 25, 1991, suspending all existing licenses and other approvals, granted by the Department of State pursuant to § 38 of the Arms Export Control Act (AECA), that authorized the export or transfer of defense articles or defense services by, for or to, Delft Instruments, N.V , (Delft) its operating divisions, and its subsidiaries is rescinded.

License applications or other requests for approval for the defense related entities within Delft will be denied until the export privileges of Delft are reinstated in accordance with section 38(g)(4) of the AECA

EFFECTIVE DATE: July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Center for Defense Trade, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: On January 25, 1991, the Office of Defense Trade Controls, Department of State, suspended all existing licenses and other approvals, granted pursuant to section 38 of the AECA, that authorized the export or transfer by, for or to, Delft Instruments, N.V., and any other subsidiaries or associated companies, of defense articles or defense services. That suspension action was taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 & 2791) and §§ 126.7(a)(1) and 126.7(a)(2) of the ITAR (22 CFR 126.7(a) (1) & (2)).

An indictment was returned, on July 15, 1992, in the U.S. District Court, District of Columbia charging Delft Instruments, N.V. (Delft), with one count of conspiracy (18 U.S.C. 371) to violate section 38 of the Arms Export Control Act (AECA, 22 U.S.C. § 2778) and the implementing International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130, and three substantive counts of violating the AECA and the ITAR. The indictment charges that the defendants conspired to violate, and did violate, the retransfer provisions of the ITAR, in that they transferred, or caused to be transferred, (1) to Iraq in April of 1990 one thermal imaging system, containing U.S.-origin components, (2) to Jordan in December of 1990 one thermal imaging system, containing U.S.-origin components, and (3) to Iraq in December of 1989 one thermal night-viewing camera, all without the prior written approval of the Department of State. On July 17, 1992, Delft entered a guilty plea to conspiring to violate and violating § 38 of the AECA.

Pursuant to a Consent Agreement, between Delft Instruments, N.V. and the Department of State, and an Order signed by the Assistant Secretary of State for Politico-Military Affairs, the Department of State's suspension imposed on January 25, 1991, (noticed in the March 1, 1991 **Federal Register**), relating to Delft Instruments, N.V. and its operating divisions, and its subsidiaries of defense articles or defense services, is rescinded, effective July 17, 1992.

The defense related entities within Delft Instruments, N.V. are the following: Delft Instruments Defense, BV, Netherlands; Delft Instruments Electro-Optics, BV (DIEO), Netherlands; Oldelft Electronic Instruments, Srl, Italy; Instrubel, NV, Belgium; Franke Systemtechnik, GmbH, Germany; OIP, NV, Belgium; and the defense related activities of BV Delft Electronische Producten, (DEP), Netherlands. DEP may receive United States-origin defense articles covered by Category XII (e) and (f) of the U.S. Munitions List, 22 CFR 121.1, for civil applications.

Dated: August 14, 1992.

William B. Robinson,

Director, Office of Defense Trade Controls, Department of State.

[FR Doc. 92-20417 Filed 8-25-92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reissuance of Certificate of 40-Mile Air, Ltd.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 92–8–32) docket 41972.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not reissue a certificate of public convenience and necessity to 40-Mile Air, Ltd., authorizing it to engage in interstate and overseas air transportation of persons, property, and mail, subject to a new condition prohibiting operations with aircraft having more than 30 passenger seats or a 7,500-pound payload capacity until the company has been found fit to do so.

DATES: Persons wishing to file objections should do so no later than September 4, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 41972 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: August 20, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–20411 Filed 8–25–92; 8:45 am]

BILLING CODE 4910-62-M

Applications of Viscount Air Service, Inc., for Domestic and Foreign Charter Certificates

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (order 92–8–33) dockets 47607 and 47608.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Viscount Air Service, Inc., fit and awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 31, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 47607 and 47608 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: August 20, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–20410 Filed 8–25–92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Intent To Prepare an Environmental Document and To Conduct Scoping by Meeting for Establishing and Operating a Terminal Doppler Weather Radar (TDWR) To Serve the Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA); Department of Transportation.

ACTION: Notice of intent to conduct public scoping by meeting.

SUMMARY: The FAA is issuing this notice to advise the public that an environmental document will be prepared for establishing and operating a TDWR at Port Columbus International Airport. To ensure that all significant issues related to the proposed action are identified, scoping comments are requested.

DATES: Written comments must be received on or before October 6, 1992.

ADDRESSES: Send written comments on the proposal to: Federal Aviation Administration, Resource and Planning Branch, AGL–420, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Mr. Orlando Alers, Airway Facilities Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, telephone (312) 694–7584.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) will prepare an Environmental Assessment (EA) for the establishment and operation of a Terminal Doppler Weather Radar (TDWR) to serve the Port Columbus International Airport, Columbus, Ohio. The following work needs to be performed to establish the TDWR facility:

- Land acquisition
- Erect a building structure to enhouse the electronic equipments
- Antenna tower structure
- Utility services
- Access Road
- Perimeter fencing

Efforts to minimize environmental impacts are to be given consideration on the siting of the TDWR facility. Impacts which cannot be avoided in the site selection process will be mitigated when practicable and reasonable. Upon FAA environmental approval, the proposed TDWR facility will be constructed and operated to serve the Port Columbus International Airport.

Also, the FAA is seeking comments and suggests from Federal, State, and local agencies, and other interested parties to ensure that full range of issues related to the proposed action are addressed and all significant issues are identified. Other sites not identified in the Candidate Site Survey Report may be offered for consideration. A copy of the scoping document and a Candidate Site Survey Report are available at the following locations;

- Newark Public Library, 88 W. Church Street, Newark OH 43055,
- Miller Branch Library, 990 W. Main Street, Newark OH 43055,
- Pataskala Public Library, 101 S. Vine, Pataskala, OH 43062,
- Pataskala Standard Library, 350 S. Main, Pataskala, OH 43062,
- Lima Township House, Mrs. Margaret Patrick, Lima Township Clerk, 3093 Patterson Road, Pataskala, OH 43062,
- Mr. Orlando Alers, Airway Facilities Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018.

The FAA plans to conduct a scoping meeting on September 8, 1992 at 7 p.m. in the Licking Height School, 6539 Summit Road, Summit Station, Ohio 43073. An advertisement will be placed in the newspaper advising the community of the date, time, and location of this meeting, thirty days in advance of the actual meeting date.

Russell P. Williams,

Manager, Resource and Planning Branch, AGL–420, Airway Facilities Division, Great Lakes Region.

[FR Doc. 92-20406 Filed 8–25–92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of aviation security advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held September 10, 1992, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone 202–267–7416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held September 10, 1992, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

The agenda for the meeting will include a report from the Threat Analysis and Communication Subcommittee, the implementation status on ASAC recommendations previously reviewed by the FAA Administrator, an update on several domestic security programs, and a report on FAA research and development programs. Attendance at the September 10, 1992, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue SW., Washington, DC 20591, telephone 202–267–7416.

Issued in Washington, DC on August 20, 1992.

Jack L. Gregory,

Deputy Assistant Administrator for Civil Aviation Security.

[FR Doc. 92-20397 Filed 8–25–92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capitol Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 8.07 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1992.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year

immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

So ordered by: Maritime Administrator, Maritime Administrator. Administrator, National Oceanic and Atmospheric Administration. Assistant Secretary for Tax Policy, Department of the Treasury.

Dated: August 19, 1992.

Warren G. Leback,

Maritime Administrator.

John A. Knauss,

Administrator, National Oceanic and Atmospheric Administration.

F.T. Goldberg, Jr.

Assistant Secretary for Tax Policy.

[FR Doc. 92-20250 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Ms. Frances J. Darpino petitioned NHTSA, requesting that the agency conduct a defect investigation of rapid acceleration in 1987 Nissan Maxima vehicles to determine whether a notification and remedy recall campaign is warranted. The petitioner alleged that when she placed the automatic transmission in reverse, the vehicle experienced a rapid acceleration, resulting in an accident. Specifically, the petitioner requested that NHTSA investigate "rapid acceleration" in 1987 Nissan Maxima vehicles and order a recall of these vehicles.

Based on NHTSA's analysis of all available information, the petition is denied. NHTSA has concluded that there is no reasonable possibility that further investigation would lead to a determination of the existence of a safety-related defect with respect to any of the allegations referred to in the petition.

NHTSA's Office of Defects Investigation (ODI) has prepared a full report that describes in detail the alleged defect, the agency's analysis of the allegations presented in the petition, and the basis for its decision to deny the petition. Interested persons may obtain copies of that report by contacting the Technical Reference Division, NAD-52, room 5108B, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2768. A brief summary of this report is presented below.

No specific component or vehicle subsystem was identified in the analysis associated with this petition as potentially defective in design or performance. The analysis considered all components of the ignition control, exhaust emissions control, automatic speed control, and fuel delivery and injection systems as potential contributors to alleged incidents of unintended vehicle acceleration described in the vehicle owner/operator complaints.

The 1987 Nissan Maxima is a front wheel drive vehicle. It is powered by a 3-liter, fuel injected V-6 engine that utilizes engine controls typical of contemporary "closed loop" designs. The engine is equipped with an array of sensors which measure various engine operating parameters and performance data. This information is transmitted to an electronic engine control device, which responds by adjusting idle speed, ignition control, and fuel mixture components and settings to achieve maximum fuel economy and minimum exhaust emissions. The petitioner's 1987 Nissan Maxima was equipped with an automatic transmission and cruise control.

Analysis of the available information revealed the following:

1. On May 8, 1992, NHTSA inspected the petitioner's vehicle. Based on this inspection, no problems with the transmission gear selector, accelerator linkage, throttle, engine and cruise control system, or brake system were found. The brakes would hold the vehicle with the throttle fully opened and the transmission in Drive or Reverse. At no time during the inspection, which included engine operation, did a sudden acceleration event occur. The agency's inspection of the vehicle did not demonstrate a problem or defect with the vehicle.

While the petitioner stated that the transmission cannot be moved from the Park position to Reverse unless the brake pedal is applied, NHTSA's inspection revealed that the vehicle's transmission could be moved out of Park, regardless of whether the brake pedal was applied. This fact is important in that the agency has found a substantial reduction in consumer reports of unintended sudden vehicle acceleration in vehicles equipped with such transmission/brake pedal shift locks. Transmission shift interlocks where installed as standard original equipment in Nissan Maxima vehicles with automatic transmissions, beginning with 1989 model year production. A reduction in the number of complaints in the later model Maxima vehicles indicates the effectiveness of the shift interlock system in preventing pedal misapplications.

2. A search of NHTSA's complaint database indicated that the 1987 Nissan Maxima has a rate of alleged unintended acceleration reports much lower than that for many other vehicles that are not equipped with a transmission/brake interlock system. These data indicate that consumers are not reporting a high incidence of this problem.

3. In 1989, NHTSA commissioned an independent study of vehicle sudden acceleration by the Transportation Systems Center (TSC). This study concluded that the only electrical component which can cause an unwanted sudden acceleration is the cruise control system. However, cruise control does not engage when the vehicle is in Reverse or if the vehicle is at a stop. The petitioner's vehicle accelerated from a stop in reverse. Thus, a defective cruise control system could not have caused the incident. Mr. Graham S. Thompson, who investigated Ms. Darpino's vehicle after the accident, stated in his report "* * * it is my opinion that this phenomenon (sudden vehicle acceleration) is caused in the electronic circuitry that causes the throttle to be fully opened, and results in the engine racing." NHTSA examined this report and discussed it with the author. Mr. Thompson stated that since he could not find any problem with the mechanical components in Ms. Darpino's car, he suspected that the electrical components may have caused sudden acceleration. He did not, however, find any evidence to support this speculation. Further, Mr. Thompson could not identify a specific component or phenomenon that would have caused the sudden acceleration.

Based on the information available, no defect trend has been observed and identified for any component or device in the subject vehicles which could cause unwanted acceleration. Analysis of the available information indicates low complaint/incident rates in the subject vehicles. Examination of the petitioner's vehicle and the circumstances of the accident indicate that the vehicle itself did not contain any defects that would have caused sudden acceleration. Further expenditure of resources to attempt to establish a safety defect trend is not

warranted. Accordingly, this petition is denied.

Authority: Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on : August 20, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–20408 Filed 8–25–92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Country of Origin Marking Trade Forums

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of trade forums on country of origin marking.

SUMMARY: The U.S. Customs Service is sponsoring three Trade Forums on Country of Origin Marking. These sessions will be of particular interest to importers, brokers, sureties and others, but domestic manufacturers and members of the public are also welcome to participate. Trade Forums will take place in Seattle on September 16, 1992; in New York City on October 2, 1992; and in Washington on October 5, 1992. Seating will be on a first-come, first-served basis in Seattle. For the New York and Washington Forms reservations should be made through the offices designated below. Customs requests that attendance be limited to no more than two persons for each organization represented.

FOR FURTHER INFORMATION CONTACT:

Seattle: 9/16/92, Mark Peterson, U.S. Customs Service, 1000 2d Ave., Suite 2000, Seattle, WA 98104–1049, (206) 553–4993; fax (206) 553–2466. Forum to be held at Red Lion Hotel Seatac, 18740 Pacific Highway South, Seattle, WA 98188.

New York: 10/2/92, Jim Rohan, U.S. Customs Service, 6 World Trade Center, room 737, New York, NY 10048, (212) 466–4507; fax (212) 466–4507. Forum to be held at New York Marriott Financial Center, 85 West Street, New York, NY 10006.

Washington: 10/5/92, Sherri Lewis, U.S. Customs Headquarters, 1301 Constitution Ave., NW., Washington, DC 20229, (202) 927–6748; fax (202) 927–1669. Forum to be held at Hyatt Regency Hotel Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

DATES: There is no deadline for registration, but Customs expects a significant number of attendees and space may be limited.

SUPPLEMENTARY INFORMATION:

Background

Customs previously announced its plans for these Trade Forums in a notice published in the **Federal Register** on April 27, 1992 (57 FR 15355). In response to the opportunity offered in that Notice, numerous written comments have been submitted addressing various aspects of the marking laws and their enforcement.

The Trade Forums will be conducted on an open-ended basis intended to elicit the fullest possible public participation and input. During the morning session the full range of marking issues will be open for examination. It is anticipated that in the afternoon a number of working groups will be formed to draft proposals on specific topics identified as being of greatest interest. The Forums will begin at approximately 9:00 a.m. and conclude at approximately 4 p.m.

The proposals developed at the Trade Forums, together with the comments already received, will be the basis for a report to the Commissioner of Customs. A copy of this report will be provided to every participant.

Dated: August 19, 1992.

John B. O'Loughlin,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 92–20391 Filed 8–25–92; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name: "Modular Computer Systems, Inc."

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "MODULAR COMPUTER SYSTEMS," used by Modular Computer Systems, Inc., a/k/a Modcomp, a Florida corporation located at 1650 West McNab Road, P.O. Box 6099, Fort Lauderdale, Florida 33340.

The application states that the trade name is used in connection with computers, computer peripherals, computer programs and computer systems. The merchandise is manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before October 26, 1992.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Room 2104), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert L. Knapp, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202) 566–6956.

Dated: August 21, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 92–20452 Filed 8–25–92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Act, I hereby appoint the following persons to the Legal Division Performance review Board, Internal Revenue Service Panel:

1. Dennis I. Foreman, Deputy General Counsel.

2. David L. Jordan, Deputy Chief Counsel.

3. Robert E. Culbertson, Jr., Associate Chief Counsel (International).

4. Roger Rhodes, Southwest Regional Counsel.

5. Paul F. Kugler, Assistant Chief Counsel (Passthroughs and Special Industries).

6. Joseph F. Maselli, Manhattan District Counsel.

This publication is required by 5 U.S.C. 4314(c)(4).

Abraham N. M. Shashy, Jr.,

Chief Counsel.

[FR Doc. 92–20375 Filed 8–25–92; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[AC-46: OTS No. 3157]

American Federal Bank, a Federal Savings Bank, Madison, South Dakota; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of American Federal Bank, a federal savings bank, Madison, South Dakota, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20377 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-50: OTS No. 2285]

Conservative Bank, a Federal Savings Bank, St. Louis, Missouri; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Conservative Bank, a Federal Savings Bank, St. Louis, Missouri, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20381 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-48: OTS No. 1581]

First Federal Savings and Loan Association of Moline, Moline, Illinois; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Moline, Moline, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suit 800, Chicago, Illinois 60601-4360.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20379 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-51: OTS No. 1884]

First Granite City Savings and Loan, Granite City, Illinois; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Granite City Savings and Loan, Granite City, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 E. Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20382 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-49; OTS No. 1799]

The First Savings and Loan Association of Little Falls, Little Falls, New Jersey; Approval of Conversion Application

Notice is hereby given that on August 6, 1992, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of The First Savings and Loan Association of Little Falls, Little Falls, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20380 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-47: OTS No. 5901

Pekin Savings and Loan Association Pekin, Illinois; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of the Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Pekin Savings and Loan Association, Pekin, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Chicago, Illinois 60601-4360.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20378 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INSTITUTE OF PEACE

Solicited Grant Projects; Call for Applications

AGENCY: United States Institute of Peace.

ACTION: Notice, Call for Applications.

SUBJECT HEADING: 1993 Solicited Grants.

DATES: Applications must be received by January 2, 1993 to be considered in the current cycle. Announcements of awards will be made on or about May 1, 1993.

ADDRESSES: United States Institute of Peace; 1550 M Street, NW, Suite 700; Washington, DC 20005–1708.

FOR FURTHER INFORMATION CONTACT: Solicited Grant Projects: Grant program (202) 429–3844.

SUPPLEMENTARY INFORMATION: The United States Institute of Peace announces the 1993 cycle of its Solicited Grant competition. Solicitation A invites proposals addressing the following: (1) the relationship between democratization and peacebuilding in Africa; (2) the role of African regional institutions in maintaining peace; and (3) the future course of civil-military relations on the continent. Solicitation B invites proposals on: (1) The regional impact of Kurdish political and political-military activities within and between Iraq, Turkey, Syria, and Iran, including the effects upon Iraq and its neighbors of growing Kurdish political autonomy; (2) Iranian and Turkish involvement in the Armenia-Azerbaijan confrontation, and their competition for influence in Central Asia, particualrly when viewed from the perspective of their relations with other powers (e.g. Russia, the United States, the European Community); and (3) the effect of Iranian-Syrian relationships upon Israel-Arab relations and the peace process, particularly upon the government of Lebanon and militant groups in Lebanon, but also upon the attitudes of Palestinian organizations both inside the Occupied Territories and oustide Israel, etc. Solicitation C invites proposals for training programs to enhance the ability of local actors, whether in Eastern Europe, the former Soviet Union, or parts of Africa, Asia and Latin America, both to reduce the potential for conflict and to sharpen peacemaking and peacebuilding skills. Project objectives should include the development of new training materials and innovative models or the modification of existing training materials and models to new contexts. Project activity may include how to use Track II and similar efforts in informal diplomacy and dispute resolution; the training of individuals in conflict management and resolution techniques; and the development of indigenous institutional capabilities to carry out such skills training.

Most solicited grants are open to two years in duration. In this cycle of competition, the Institute expects to award several grants in the range of $40,000 to $60,000 for research projects on Africa or the Middle East. Several grants of up to $100,000 each will be made in support of conflict resolution training projects. It is the Institute's strong preference that grants be made to institutions rather than to individuals. The Institute accepts applications from nonprofit organizations, official public institutions, and individuals. Detailed information and application material are available upon request. For further information and application forms, please write or call: Solicited Grants, United States Institute of Peace, 1550 M Street, NW, Washington, DC 20005–1708, Phone (202) 429–3844. The closing date for receipt of solicited grant applicants in the current review cycle is January 2, 1993.

Dated: August 18, 1992.

Bernice J. Carney,

Director of Administration.

[FR Doc. 92–20414 Filed 8–25–92; 8:45 am]

BILLING CODE 3155–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 166
Wednesday, August 26, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:15 a.m., September 21, 1992.

PLACE: Hyatt Regency Washington, 400 New Jersey Avenue, NW., Washington, DC 20001.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) and (9)(B) and 22 CFR 1302.4 (a) and (h).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,

Executive Director.

[FR Doc. 92-20543 Filed 8-24-92; 1:53 pm]

BILLING CODE 6155-01-M

SECURITIES AND EXCHANGE COMMISSION.

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 37188, August 18, 1992.]

STATUS: Closed meetings.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, August 12, 1992.

CHANGE IN THE MEETING: Additional item/cancellation.

The following additional item was considered at a closed meeting on Tuesday, August 18, 1992, at 2:30 p.m.

Litigation matter.

Closed meetings scheduled for Thursday, August 20, 1992, at 2:30 p.m., and for Friday, August 21, 1992, at 10:00 a.m., have been cancelled.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272-2000.

Dated: August 20, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20506 Filed 8-21-92; 5:01 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 24, 1992.

A closed meeting will be held on Wednesday, August 26, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 26, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administration proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272-2100.

Dated: August 21, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20507 Filed 8-21-92; 5:01 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
August 26, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Protective Breathing Equipment Training; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Notice No. 92-11]

RIN 2120-AD76

Protective Breathing Equipment Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the current regulations requiring part 121 crewmembers to perform an approved firefighting drill using protective breathing equipment (PBE). The proposal would allow part 121 air carriers to choose one of two options to meet the one-time firefighting training requirement presently in the regulation. This action was prompted by a letter from the Association of Flight Attendants (AFA) and petitions for exemption from Pan American World Airways (Pan Am) and United Airlines, Inc. The objective of the proposal is to ensure that each crewmember accomplishes a firefighting drill in which the crewmember combats an actual fire in addition to, or combined with, a PBE drill.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC10), Docket No. 24792, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 24792. Comments may be examined in room 915G on weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, 304B, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, opinions, or arguments, and by commenting on the potential environmental, economic, federalism, or energy impact of this proposal. Comments about the proposed implementation and the effective date of the rule are specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before October 26, 1992, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 24792." When the FAA receives the comment, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future FAA NPRMs should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

The requirement for part 121 crewmembers to perform an approved firefighting drill using PBE is prescribed in § 121.417(c)(1)(i) of the Federal Aviation Regulations (FAR). The regulation requires that each crewmember perform a one-time, approved firefighting drill with an actual fire during initial training, using at least one type of installed hand fire extinguisher appropriate for the type of fire to be fought and the type of installed PBE required by § 121.337. This proposal would amend the current training requirements and would clarify the methods for air carrier compliance.

The current requirement is contained in Amendment No. 121-193, Protective Breathing Equipment, issued on May 26, 1987 (52 FR 20950, June 3, 1987). The amendment was based on National Transportation Safety Board (NTSB) recommendations and on information received from investigations of accidents in which smoke and noxious fumes may have impeded crewmembers fighting cabin fires. In addressing these safety concerns, the rule included a training requirement for crewmembers to perform an approved firefighting drill, fighting an actual fire, using PBE. The preamble to the final rule addressed concerns raised by commenters who objected to the training requirement that flight attendants fight an actual fire while wearing PBE. The commenters cited potential hazards for flight attendants and endorsed the use of realistic training aids in place of fighting an actual fire. The FAA disagreed with the commenters and responded that demonstrations and realistic training aids cannot replace the training benefits and confidence that the experience of fighting an actual fire provides. The FAA encouraged carriers to supplement firefighting training with realistic training aids in order to reinforce the experience of fighting an actual fire.

On March 14, 1989, the FAA issued Advisory Circular (AC) 121-31, Training on Protective Breathing Equipment, which provided guidance for crewmember training using PBE. AC 121-31 made recommendations of fire control procedures, operation of PBE, firefighting drills, and equipment standardization. Paragraph (d) of the guidance material suggested methods of carrier compliance with § 121.417(c)(l)(i) and offered two options for meeting the firefighting drill requirements. In the first option, a carrier could require each crewmember to perform a firefighting drill by fighting an actual fire using an appropriate fire extinguisher while wearing PBE. The second option, known as a "split drill," allowed crewmembers to perform the firefighting drill by fighting a simulated fire using an appropriate fire extinguisher while wearing PBE. However, the crewmember was required to perform an additional drill, which did not have to include the use of PBE, but which had to include the fighting of an actual fire using an appropriate fire extinguisher.

The FAA received a number of inquiries about the recommended firefighting drills described in AC 121-31. In order to address these inquiries, the FAA issued Action Notice 8430.40, Training on Protective Breathing Equipment, on June 7, 1989. The notice stated that if a carrier elects to have crewmembers fight a simulated fire in a firefighting drill while wearing PBE, the carrier's training program must provide for crewmembers to fight an actual fire

in an additional firefighting drill. It directed carriers whose training programs did not include firefighting drills in which crewmembers fought actual fires to amend their training programs to include firefighting drills with actual fires. However, the notice also stated that the FAA would consider requests for the use of a simulated fire during both of the firefighting drills described in AC 121-31, and that all requests for use of "fire simulation" should be forwarded to the Air Transportation Division for approval.

In a January 26, 1990, letter to the FAA, AFA requested enforcement of § 121.417(c)(l)(i). AFA's letter states that some flight attendant trainees are not fighting an actual fire while wearing PBE in the firefighting drill, as required by the regulation. AFA maintains that several carriers are not in compliance with the regulation and that any deviation from the requirements should be handled through the exemption process.

The FAA, in response to AFA's letter, stated that an actual fire must be fought during the drill required by § 121.417(c)(l)(i) and that PBE must be worn while fighting an actual fire in that drill. Therefore, any carrier who is not using an actual fire during the drill required in § 121.417(c)(1)(i) is not complying with the regulation.

Subsequently, Pan Am filed a petition for exemption, dated July 27, 1990. The petition requests an exemption from § 121.417(c)(l)(i) in order to allow firefighting training already completed by their flight attendants to suffice under the regulation. The petition states that Pan Am began PBE training in October 1988. Each flight attendant completed a firefighting drill with a simulated fire while wearing PBE in recurrent training. The fire simulation included the use of three separate aircraft fire scenarios and reduced visibility. Pan Am's petition says that, after AC 121-31 was issued, Pan Am followed its guidance, and, in the next recurrent training, each flight attendant completed an approved firefighting drill in which the flight attendant combatted an actual fire with an appropriate extinguisher but without wearing PBE. The petition states that the training was conducted under an approved training program and met the requirements set forth in Action Notice 8430.40 and AC 121-31. The petition seeks credit for the firefighting training described above, because of the cost of retraining thousands of flight attendants in addition to what the petition describes as the potentially hazardous exposure of those flight attendants to an additional actual firefighting drill.

United Airlines, Inc., filed a petition for exemption dated September 17, 1990. The petition requested exemption from § 121.417(c)(l)(i) in order to permit the one-time firefighting drill to be accomplished using "fire simulation." The petition stated that the use of training aids was not evaluated in the preamble to Amendment No. 121-193 and that an appropriate course of action is to improve training aids and apply them to carefully developed training objectives. The petition also stated that, with the exception of the preamble language of Amendment No. 121-193, the language of the final rule appears to allow a firefighting drill using simulated fires instead of actual fires. In addition, the petitioner expresses environmental concerns about the use of actual fires, the discharge of Halon fire extinguishers during firefighting training, and possible bans or restrictions of such training imposed by political jurisdictions.

Review of Industry Practices

An FAA review of Part 121 air carrier firefighting training programs disclosed that more than one-half of all of Part 121 air carrier training programs require crewmembers to fight an actual fire while wearing PBE during firefighting drills. Additionally, even United Airlines now requires its crewmembers to perform two firefighting drills—one in which they fight a simulated fire while wearing PBE and another in which they fight an actual fire without using PBE.

Subsequent to this review, the FAA issued Amendment No. 121-220 (Docket No. 24792) (55 FR 51078) on December 11, 1990, which extends the compliance date of the current rule to July 31, 1992. In the preamble to Amendment No. 121-220, the FAA states that AC 121-31's recommended method of PBE training using fire simulation was inconsistent with the language of the current rule and that it has been rescinded.

Intent of the Proposed Amendment

Based on its review of current industry practices, Pan Am and United Airlines' petitions for exemption, and letters from AFA, the FAA has reevaluated the requirements of the current regulation and proposes to amend the rule. The objective of the current regulation is to train crewmembers on the use of PBE and firefighting equipment available on aircraft in which they are assigned duties. This training includes the activation of PBE and fire extinguishers. Currently, crewmembers are required to meet these training objectives by performing an approved firefighting drill in which they fight an actual fire with an appropriate fire extinguisher while wearing PBE. The FAA has determined, however, that air carriers should be allowed to separate this training into two categories: training on PBE and training on firefighting equipment. The FAA has also determined that simulated fires should be allowed during training on PBE, but that it is essential that crewmembers complete a one-time firefighting drill in which they combat an actual fire with an appropriate fire extinguisher as a part of training on firefighting equipment.

Under this proposal, air carriers may continue to combine the training on PBE and firefighting equipment training into one drill if an actual fire is used during the training. However, if simulated fires are used during PBE training, each crewmember must complete a separate firefighting drill with an actual fire using a fire extinguisher appropriate to the type of fire. The FAA believes that the proposed amendment better implements the intent of the current regulation. Crewmembers would still be required to have knowledge and skill relating to firefighting techniques and the operation and use of PBE, as well as first-hand knowledge of how fire retardants react with an actual fire.

General Discussion of the Proposed Amendment

Section 121.417

Proposed § 121.417(c)(1)(i) would require crewmembers to combat an actual or simulated fire using at least one type of installed hand fire extinguisher appropriate for the type of fire, while wearing the appropriate type of PBE. This requirement would be designated as a PBE drill, and it would emphasize the correct use of PBE in a firefighting scenario. The crewmember would perform the drill using PBE while combatting an actual or simulated fire.

The FAA acknowledges the training benefits of simulation and the various firefighting scenarios that may be enacted when using a simulated fire in combination with a mock-up of an aircraft cabin, galley, oven, lavatory, or passenger seat. In addition to demonstrating proper operation of the emergency firefighting equipment, crewmembers can be trained in proper crew coordination, communication, and decision-making. Many major air carriers currently conduct PBE training in sophisticated cabin trainers that are equipped with various types of devices that simulate smoke and fire. The FAA recognizes that training with simulated fires, in conjunction with a fire

extinguishing drill that includes an actual fire, is beneficial because it allows various aircraft firefighting situations to be created in the environments in which they are likely to take place. The FAA also recognizes that many air carriers may choose not to use simulator devices. These carriers would then require their crewmembers to perform the PBE drill using an actual fire, as currently prescribed by § 121.417(c)(1)(i). In such a combined drill, crewmembers still demonstrate the proper use of PBE and fight an actual fire using an appropriate type of fire extinguisher wearing PBE.

Proposed Section 121.417(c)(1)(ii)

This proposed new subparagraph would require air carriers to conduct approved firefighting drills in which crewmembers fight an actual fire using an installed hand fire extinguisher appropriate for the type of fire. The proposed requirement would not apply to crewmembers whose PBE drill under proposed § 121.417(c)(1)(i) is conducted with an actual fire. The FAA acknowledges that this firefighting drill is a one-time requirement; therefore, if a crewmember fights an actual fire during the PBE drill, the crewmember need not perform another drill. Furthermore, crewmembers would not be required to fight an actual fire in the additional initial or recurrent training drills set forth in current § 121.417(c)(2).

This proposed new section emphasizes the importance of firefighting training that includes a drill in which a crewmember fights an actual fire. The psychological effect of facing an actual fire can not be achieved through simulation. The National Fire Protection Agency's (NFPA) Bulletin 408, Aircraft Hand Fire Extinguishers, states that "live fire training provides flight crews with psychological conditioning, firefighting techniques, and knowledge of extinguishing agent capabilities and limitations under actual fire situations." The bulletin also recommends that firefighting training with an actual fire be reinforced by classroom instruction using manipulative skills training (simulation). Recommended fire simulation scenarios include galley, lavatory, flight deck, closed compartment, and flammable liquid fires.

The FAA's primary goal in drafting this proposal is to clarify and reinforce the present requirement that crewmembers undergo a one-time training drill in which they combat an actual fire. This was stated in the preambles to Amendments No. 121-193 and Amendment 121-220. By permitting air carriers to allow crewmembers to perform the currently required PBE firefighting drill with a simulated fire, the FAA would allow air carriers additional flexibility in providing quality training for various types of situations.

One of AFA's primary concerns is that there are crewmembers working in the industry who have not fought an actual fire in training. This proposal modifies the current requirement by providing an alternative to the current regulation. However, each crewmember would still be required to fight an actual fire in initial training. The FAA recognizes that, although not all firefighting situations require the use of PBE, they usually require the use of a fire extinguisher. Therefore, the FAA believes that the proposed change in the structure of the current regulation enhances firefighting training objectives.

Section 121.417(d)

Proposed § 121.417(d) would require any crewmember who serves in Part 121 operations to have completed the PBE drill and the firefighting drill in proposed subparagraphs (c)(1)(i) and (c)(1)(ii) by July 31, 1992, the compliance date set by Amendment 121-220. Because the proposal provides two methods of compliance, it is not necessary to adjust the compliance period. The proposed drills would be completed during a crewmember's initial training. All crewmembers who have not received training which complies with subparagraphs (c)(1)(i) and (c)(1)(ii) must be given that training by July 31, 1992. If it is not given in initial training it will be necessary for the air carrier to give that training in recurrent training sessions or in specially scheduled sessions. It will be necessary for air carriers to schedule sessions efficiently.

This section also contains a provision that would credit crewmembers who have performed the proposed PBE and firefighting drills described in subparagraphs (c)(1)(i) and (c)(1)(ii) with meeting the requirements of the regulation if the firefighting training was performed after May 26, 1987, and prior to the effective date of this proposal. However, to receive credit, the carrier would have to present to the Director of Flight Standards Service information or documentation showing that the crewmember accomplished firefighting training in a manner that would meet the requirements of the proposed regulation.

The May 26, 1987, date corresponds to the date of adoption of Amendment No. 121-193. The FAA believes that it is not feasible for credit to be given for firefighting drills performed prior to May 26, 1987, because requirements for firefighting drills involving an actual fire, simulated fire, or PBE training did not exist in the FAR prior to that date.

Section 121.417(f)

The proposal would amend § 121.417(f) by defining the terms "actual fire," "simulated fire," "combats," and "PBE drill" to this section. For the purposes of this proposed rule, "actual fire" means an ignited combustible material, in controlled conditions, of a sufficient magnitude and duration to accomplish the training objectives outlined in subparagraphs (c)(1)(i) and (c)(1)(ii) of the proposed rule. The FAA is not proposing to require exact dimensions and types of materials to be used for actual fires in the firefighting drills. To do so would mean that crewmembers might have to be retrained because their previous training might not meet these specific requirements. This additional training could impose an additional cost on air carriers.

A review of current industry practice shows that air carriers frequently contact local or airport fire departments prior to conducting any type of firefighting training, and, in some cases, fire department personnel are present during training. Many local fire departments provide training course outlines on the use of small, hand fire extinguishers, and they also typically provide training on the operation of hand fire extinguishers to employees of local businesses and organizations. These employees are given the opportunity to extinguish an actual fire under fire department supervision.

Among the materials used by fire departments and air carriers in creating actual fires are kerosene or diesel fuel floating on water in a metal pan or drum. These types of fires are ignited outdoors in an open area. Some air carriers and fire departments have constructed indoor fire rooms or fire pits in which they ignite materials such as seat cushions and use exhaust fans to eliminate smoke.

The proposal defines a "simulated fire" as an artificial replication of a fire used to create the various firefighting situations that could occur on an aircraft. The FAA provided guidance material on fire simulation in AC 121-31, now rescinded. The AC recommended the use of electric lights that the instructor could control by turning them on and off to show that the crewmember has extinguished the fire correctly. Smoke simulation is a component of the fire simulation described in the guidance material. Artificial smoke may be used to simulate smoke coming from a galley

oven, under a lavatory door, or under a passenger seat.

Under the proposal, "combats," used in this context, means fighting an actual or simulated fire until such fire is extinguished. In the case of a simulated fire, extinguishment would be determined by the instructor.

The proposal defines "PBE drill" as an emergency drill in which a crewmember demonstrates the proper use of protective breathing equipment while fighting an actual or simulated fire.

If this proposal is adopted as a final rule, the FAA will issue an AC or Operations Bulletin providing additional detailed guidance on the proper use of PBE, actual fires, and adequate simulation of a fire. The guidance will be based on industry practices that experience has shown to be adequate.

Section 121.417(c)(1)(iii)

The proposal would redesignate § 121.417(c)(1)(ii) as § 121.417(c)(1)(iii). The emergency evacuation drill requirements listed in this section would remain unchanged.

Paperwork Reduction Act

Information collection requirements for Part 121 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers as follows: for Part 121, OMB Control Number 2120–0008.

Economic Assessment

The proposed amendment does not impose any additional costs to operators. This proposal allows air carriers to choose one of two options to meet the one-time firefighting training requirement in the present regulation. The FAA is providing a training option that is equivalent in terms of safety and training effectiveness to what the original rule requires. Therefore, a full Regulatory Evaluation is not warranted.

International Trade Impact Analysis

The FAA has determined that the proposed amendments to Part 121, if adopted, would not have a significant impact on international trade. The proposal is expected to have no impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States. The proposed rule would primarily affect U.S. operators of aircraft for hire that provide both domestic and international service. Furthermore, the proposed amendments are consistent with section 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its power and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

Regulatory Flexibility Determination

Congress enacted the Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules that may have a significant impact on a substantial number of small entities. The proposed rule would impose no additional costs on air carriers; therefore, it would not have a significant economic impact on small business entities.

Federalism Implications

The proposed amendment would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not be a significant economic impact on a substantial number of small entities under the criteria of the RFA. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Aviation safety, Common carriers, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 121.417 is amended by revising paragraphs (c)(1)(i), (d), and (f), redesignating current paragraph (c)(1)(ii) as (c)(1)(iii), and adding a new paragraph (c)(1)(ii) to read as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(c) * * *

(1) * * *

(i) At least one approved protective breathing equipment (PBE) drill in which the crewmember combats an actual or simulated fire using at least one type of installed hand fire extinguisher that is appropriate for the type of actual fire or simulated fire to be fought while using the type of installed PBE required by § 121.337 of this part for combatting fires aboard airplanes;

(ii) At least one approved firefighting drill in which the crewmember combats an actual fire using at least one type of installed hand fire extinguisher that is appropriate for the type of fire to be fought. This firefighting drill is not required if the crewmember performs the PBE drill of subparagraph (c)(1)(i) by combatting an actual fire; and

(iii) An emergency evacuation drill with each person egressing the airplane or approved training device using at least one type of installed emergency evacuation slide. The crewmember may either observe the airplane exits being opened in the emergency mode and the associated exit slide/raft pact being deployed and inflated, or perform the tasks resulting in the accomplishment of these actions.

* * * * *

(d) After July 31, 1992, no crewmember may serve in operations under this part unless that crewmember has performed the PBE drill and the firefighting drill prescribed by subparagraphs (c)(1)(i) and (c)(1)(ii) of this section. Any crewmember who performs the PBE drill and the firefighting drill prescribed in subparagraphs (c)(1)(i) and (c)(1)(ii) of this section after May 26, 1987, and prior to the effective date of this requirement, is deemed to be in compliance with this regulation upon presentation of information or documentation, in a form or manner acceptable to the Director,

Flight Standards Service, showing that the appropriate drills have been accomplished.

* * * * *

(f) For the purposes of this section the following definitions apply:

(1) *Actual fire* means an ignited combustible material, in controlled conditions, of sufficient magnitude and duration to accomplish the training objectives outlined in subparagraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) *Combats*, in this context, means to fight an actual or simulated fire using an appropriate type of fire extinguisher until such fire is extinguished.

(3) *Observe* means to watch without participating actively in the drill.

(4) *PBE drill* means an emergency drill in which a crewmember demonstrates the proper use of protective breathing equipment while fighting an actual or simulated fire.

(5) *Perform* means to satisfactorily accomplish a prescribed emergency drill using established procedures that stress the skill of the persons involved in the drill.

(6) *Simulated fire* means an artificial duplication of smoke or flame used to create various aircraft firefighting scenarios, including, but not limited to, lavatory, galley oven, and aircraft seat fires.

Issued in Washington, DC on August 18, 1992.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 92-20321 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
August 26, 1992

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Proposed Alteration of the Denver Terminal Control Area, CO; Proposed Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 71 and 91

[Airspace Docket No. 91-AWA-3]

Proposed Alteration of the Denver Terminal Control Area; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the Denver, CO, Terminal Control Area (TCA) to coincide with the scheduled October 1993 opening date of the new Denver International Airport (DVX). DVX replaces the Denver Stapleton International Airport (DEN) and will be located 8 miles northeast of DEN. The proposed action would enable air traffic control (ATC) to provide terminal ATC service to turbojet aircraft in a TCA environment throughout transition to and from the en route structure. This proposal would extend the lateral limits of the TCA to 30 nautical miles from DVX to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This proposal would raise the upper limits of the TCA to 12,000 feet mean sea level (MSL). The proposal would enhance air traffic procedures and simplify visual flight rules (VFR) transient operations outside TCA airspace. An objective of this proposal is to increase safety substantially while accommodating the legitimate concerns of airspace users.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Airspace Docket No. 91-AWA-3, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by falling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment No. 91-78 to part 91 of the Federal Aviation Regulations (FAR) which provided for establishment of TCA's (35 FR 7782).

On June 21, 1988, the FAA published a final rule which required aircraft to have Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except aircraft not originally certified with an engine driven electrical system, or which had not subsequently been certified with such a system installed (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) required the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, or be a student pilot who had received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

Background

TCA Operations

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between general aviation (GA) aircraft and air carrier, military, or other GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of mixed IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCA's. The FAA is proposing to take action to modify or implement additional TCA's to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

TCA Rule

Section 91.131 of the FAR (14 CFR part 91) prescribes operating rules and pilot and equipment requirements in airspace designated as a TCA. The rule provides, in part, that a person must: (1) Obtain appropriate authorization from ATC prior to operation of his aircraft in the TCA; (2) operate large turbine engine-powered aircraft to or from a primary airport at or above the designated floors while within the lateral limits of the TCA, unless otherwise authorized by ATC; (3) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; and (4) hold at least a private pilot certificate, or, if the aircraft is operated by a student pilot, meet the requirements of § 61.95 of the FAR (14 CFR part 61).

Unless otherwise authorized by ATC, no person may operate an aircraft within a TCA unless that aircraft is equipped with: (1) For IFR operations—an operable VOR or TACAN receiver; (2) For all operations—an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and (3) the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.215 of the FAR, except as provided in paragraph (d) of that section.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation, or more efficient use of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may be conducted only under the terms of an ATC authorization.

Definitions and operating requirements applicable to TCA's may be found in §§ 71.12, 91.1, 91.117, 91.131, 91.215, SFAR No. 62, and appendix D to part 91 of the FAR (14 CFR parts 71 and 91). Specific airspace designations for TCA's are published in § 71.401(b) of FAA Order 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The TCA listed in this document would be published subsequently in the Handbook.

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles, respectively. The standard TCA vertical limits normally should not exceed 12,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent on terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Suspension of Certain Aircraft Operations From the Mode C Transponder Requirement

On December 5, 1990, the FAA published Special Federal Aviation Regulation (SFAR) No. 62 which suspends, until December 30, 1993, certain provisions of the regulation which requires the installation and use of automatic altitude-reporting (Mode C) transponders (55 FR 50302). SFAR No. 62 provides access to specified outlying airports within 30 miles of a TCA-primary airport (Mode C veil) for aircraft without Mode C transponders. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within ATC radar coverage and not used predominantly by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment.

Paragraph (7), section 2 of SFAR No. 62 identifies airports within a 30 NM radius of the Denver Stapleton International Airport where aircraft not equipped with Mode C transponders can operate at and below 1,200 feet above ground level (AGL): (1) Within a 2-nautical-mile radius, or, if directed by ATC, within a 5-nautical-mile radius, of a listed airport; and (2) along the most direct and expeditious routing, or a routing directed by ATC between that airport and the outer boundary of the Mode C veil, consistent with established traffic patterns, noise abatement procedures, and safety.

The designation of DVX as a TCA-primary airport would create a new Mode C veil located within a 30-nautical-mile radius of DVX. Thirteen additional airports are proposed to be added to paragraph 7, section 2 of SFAR No. 62, as a result of the proposed DVX Mode C veil. The airports located approximately 25 to 30 miles from DVX and outside the current Denver Stapleton TCA Mode C veil are identified as follows:

(1) Air Dusters Inc., Airport, Roggen, CO.
(2) Bijou Basin Airport, Byers, CO.
(3) Bowen Farms No. 1 Airport, Littleton, CO.
(4) Chaparral Airport, Byers, CO.
(5) Dead Stick Ranch Airport, Kiowa, CO.
(6) Horseshoe Landings Airport, Keenesburg, CO.
(7) Kostroski Airport, Franktown, CO.
(8) Lemons Private Strip Airport, Boulder, CO.
(9) Reid Ranches Airport, Roggen, CO.
(10) Singleton Ranch Airport, Byers, CO.
(11) Sky Haven Airport, Byers, CO.
(12) Tri-County Airport, Erie, CO.
(13) Westberg-Rosling Farms Airport, Roggen, CO.

Additionally, the FAA proposes to remove five airports from paragraph 7, section 2 of SFAR 62 because they are located beyond the proposed DVX 30-mile TCA mode C veil. These airports are:

(1) Athanasiou Valley Airport, Blackhawk, CO.
(2) Flying J Ranch Airport, Evergreen, CO.
(3) Marshdale STOL, Evergreen, CO.
(4) Meyer Ranch Airport, Conifer, CO.
(5) Vance Brand Airport, Longmont, CO.

Pre-NPRM Public Input

Informal airspace meetings were held in the Denver area September 11–13, 1990. These meetings allowed local aviation interests and airspace users an opportunity to provide input to the proposed alteration of the Denver TCA. Fourteen written comments were received from private citizens, local government agencies, user groups, and local airport authorities during the public comment period following the informal airspace meetings.

The State of Colorado, Division of Aviation, organized a user committee consisting of members of users groups and other general aviation representatives that submitted recommendations to the FAA for consideration. With few exceptions, the proposed TCA contains the recommendations submitted by the user committee.

Both the verbal and written comments, along with the FAA's findings, are summarized as follows:

1. Several commenters suggested lowering the ceiling of the proposed TCA from 12,500 to 10,000 feet MSL. This suggestion was not adopted. However, the ceiling is now proposed to be 12,000 feet. The TCA is designed to allow arriving turbojets at 12,000 feet MSL airspace to become aligned for simultaneous parallel triple instrument landing system (ILS) precision approaches. Many turbojet aircraft would be operating normally on the downwind leg of the traffic pattern in the maneuvering phase of flight at and above 10,000 feet MSL. Under the proposed rule, turbojet departures would be protected through an altitude of 12,000 feet MSL. These operating practices would allow arriving and departing aircraft to enter and exit through the top of the TCA and would

decrease the inadvertent mixture of controlled and uncontrolled aircraft during critical phases of flight.

2. Three commenters suggested the use of geographical landmarks to define the TCA boundaries in lieu of lines derived from navigational aids. Other commenters requested that the FAA combine geographical landmarks with points and boundaries derived from navigational aids. The FAA agrees with these commenters, and to the extent practical, has used geographical landmarks and geographic coordinates in this proposed rule to delineate the boundaries of the TCA.

3. Many commenters opposed the FAA's proposal of a 30-mile radius of the DVX VOR as the western boundary of the TCA. They suggested that such a boundary would compress VFR operations and would not permit adequate airspace to transition the mountains west of Denver. The FAA agrees and, to accommodate this concern, proposes to establish the western boundary of the TCA along Wadsworth Boulevard and State Highways 75 and 287.

4. Several commenters were concerned about the lack of a "cutout" for the Buckley Air National Guard (ANG) Base, Aurora, Front Range, and Brighton Van Aire Airports. The FAA agrees and proposes to exclude these airports from the inner core of the TCA.

5. One commenter suggested inclusion of Buckley ANG Base, Aurora, and Front Range Airports in the surface area of the TCA to prevent inadvertent restraints placed on the operations at DVX. The FAA disagrees. With the proposed establishment of a control tower at Front Range Airport, and with the issuance of appropriate letters of agreement between facilities, an equivalent level of safety and access to Front Range Airport and Buckley ANG Base can be maintained without applicable TCA restrictions. Also, the cutouts proposed for the Aurora and Brighton Van Aire Airports would not adversely affect the operations at DVX. If the Aurora Airport closes, the exclusion for Aurora would be reevaluated.

6. One commenter suggested that the floor of the TCA over Buckley ANG Base should be established at 7,200 feet MSL in lieu of 7,500 feet MSL. The FAA disagrees. A floor of 7,500 feet MSL was established over Buckley ANG Base to accommodate the training requirements of the high performance A-7 military turbojets and the future training requirements of the F-16 military turbojets. Situations requiring aircraft departing DVX to cross Buckley ANG Base will be addressed in a letter of agreement between Denver Terminal Radar Approach Control and Buckley Tower.

7. Several commenters indicated that a 30-mile boundary for the proposed TCA was excessive and unnecessary. The FAA disagrees. The boundary of the proposed TCA would extend to 30 miles only in areas necessary to ensure that turbojets enter and exit through the top of the TCA. The western boundary was adjusted to allow additional airspace for VFR operation outside TCA airspace.

8. One commenter suggested that the eastern boundary be "chopped off," similar to the western boundary, to permit an alternative route for aircraft not participating in the TCA. This suggestion was not adopted. The western boundary was moved eastward to provide additional airspace for aircraft circumnavigating the Denver area to the west. The terrain and topographical features to the east of the proposed TCA are lower than the mountain ranges to the west and would permit aircraft circumnavigating the TCA ample airspace to transition beneath the floor of the TCA. Consequently, the proposed floor of the TCA east of DVX is 10,000 feet MSL.

The Proposal

The FAA proposes to amend parts 71 and 91 of the FAR (14 CFR parts 71 and 91) to modify the TCA at Denver, CO, to coincide with the establishment of the new Denver International Airport (DVX). DVX will be located 8 miles northeast of the present Denver Stapleton International Airport. The new airport ultimately will replace Denver Stapleton International Airport. This alteration would better serve the users, as well as the FAA, by providing airspace configured to handle the new procedures that will be put in place at DVX. The FAA has determined that modifying the TCA to coincide with the relocation of the Denver International Airport is in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in the terminal area. The proposed alteration is depicted on the attached chart.

The proposed configuration considers the present terminal area flight operations and terrain as follows:

1. The inner core of the proposed TCA includes airspace 10 nautical miles from the DVX VOR from the surface to and including 12,000 feet MSL. Cutouts are proposed for five airports in the inner core of the TCA: Aurora, Buckley ANG Base, Front Range, Heckendorf, and Brighton Van Aire Airports. The floor of the TCA in these areas varies from 6,000 to 7,500 feet MSL. This airspace would contain instrument approach/departure procedures for DVX and would allow adequate airspace for operations at the above airports without affecting aircraft transitioning to final approach visually or on radar vectors for an instrument approach into DVX. Bromley Lane is used to depict the northern boundary of the inner core of the proposed TCA. The vertical limit of the entire TCA is proposed to be 12,000 feet MSL.

2. The intermediate area includes airspace between 10 and 20 nautical miles from the DVX VOR, including airspace extending west to Wadsworth Boulevard and Colorado Highway 287, bounded on the north by Colorado Highway 7 and on the south by Hampden Avenue. The intermediate area contains subarea floors that vary from 6,000 to 8,000 feet MSL. This airspace would provide a stepdown profile to contain aircraft in the radar traffic pattern transitioning to the final approach course from their downwind and base legs for the primary airport. It also would provide airspace for departures transitioning to the en route environment.

3. The outer area, proposed between the 20- and 30-nautical-mile radius from the DVX VOR, contains floors varying from 8,000 to 10,000 feet MSL. This airspace would provide an area to contain aircraft during climb and descent profiles to transition between the terminal and en route structure, and it would allow VFR aircraft to circumnavigate the TCA. Arriving turbojet and turboprop aircraft would enter terminal airspace from four designated areas. The configuration of the outer area is designed to allow sufficient airspace for departures while allowing arriving aircraft to be vectored and sequenced to the final approach courses. This configuration also would preserve airspace below the TCA for nonparticipating aircraft.

The preceding summary of the proposed alteration of the TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Denver International Airport. ATC would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this TCA would greatly enhance the safety of flight within the congested airspace overlying the Denver metropolitan area by facilitating the separation of controlled and uncontrolled flight operations.

Environmental Review

FAA Handbook 1050.1D, Policies and Procedures for Considering Environmental Impacts, excludes the establishment or modification of TCA's from the requirements of an environmental assessment. However, in accordance with the National Environmental Policy Act of 1969, the FAA conducted an environmental assessment to determine the effect the establishment of a new airport would have on the quality of the human environment. Included in the scope of the assessment was the proposed modification of the Denver TCA, the routing of aircraft, and the change in air traffic procedures associated with the relocation of a major airport. The FAA concluded in the Environmental Impact Statement, which was issued in September 1989, that the new airport and the non-specific changes associated with modifying the TCA would have no significant impact on: Noise; land use; air or water quality; historic, architectural, archeological, or cultural resources; endangered or threatened species; wetlands; flood plains or coastal zones; wild and scenic rivers; or farmlands.

Paperwork Reduction Act

In accordance with the paperwork Reduction Act of 1980 (Pub. L. 96–511), there are not requirements for information collection associated with this proposed rule.

Regulatory Evaluation Summary

Introduction

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, the estimated costs and anticipated benefits of the proposal to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposal is not major as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document, termed a "regulatory evaluation," which analyzes only this proposed rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Benefit-Cost Analysis

This proposal would extend the lateral limits of the TCA to 30 nautical miles from DVX to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This proposal would raise the upper limits of the TCA to 12,000 feet mean sea level (MSL). To a lesser extent, the proposed rule would eliminate airspace by 4 nautical miles in the western boundaries. Replacement and relocation of the primary airport would coincide with the scheduled October 1993 opening date of the new DVX Airport. DVX replaces DEN, and it would be located 8 miles northeast of DEN.

The proposal is intended to enhance aviation safety by lowering the risk of midair collisions through the use of increased capability by ATC to separate all aircraft in terminal airspace in and around the Denver area, while accommodating the legitimate concerns of airspace users.

Costs

The FAA has determined that no costs would be associated with implementation of the proposed modification to the Denver TCA to either the agency or aircraft operators for the reasons discussed below.

Costs to the FAA

The proposed rule would not impose any additional administrative cost to the FAA for either personnel or equipment. The additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources which are already in place at the Denver TCA. According to FAA air traffic personnel, the proposed rule would not require any additional air traffic control, radar control, or handoff positions at the TCA.

The potential costs of revising aeronautical charts to reflect the change of the airspace around the Denver TCA would be incorporated when the charts are routinely updated and printed. Therefore, all costs associated with printing aeronautical charts are assumed to be a normal cost of doing business.

Costs to Aircraft Operators

The proposed rule would not impose any additional cost to aircraft operators in the form of either avionics equipment or circumnavigation. Potential costs to aircraft operators without Mode C transponders have already been accounted for by the Mode C rule. The potentially affected GA aircraft operators are assumed to already have other types of avionics equipment (such as operable two-way radio and VOR) required for entering a TCA. The only aircraft without Mode C transponders would be aircraft not originally certificated with an engine-driven electrical system, or which have not subsequently been certified with such a system installed. Costs to these types of aircraft have already been accounted for by the Mode C rule.

The proposed rule would not adversely impact aircraft operators who routinely operate under IFR, primarily large air carriers, business jets, commuters, and air taxis. Aircraft operators who routinely operate under VFR, however, would potentially be impacted by the proposed rule: operators of small general aviation (GA) airplanes and other GA aircraft operators, such as glider pilots and balloonists. Other airspace user groups, such as sport parachutists and some student pilots, who operate within the proximity of the Denver TCA also would be potentially impacted by the proposed rule.

As the result of the proposed rule, segments of the TCA lateral boundaries would be expanded from 20 to 30 nautical miles. The expanded segments of the TCA lateral boundaries would be proposed with floors that range from 8,000 to 10,000 feet MSL. This proposed action would allow small GA airplane operators, glider pilots, and balloonists to circumnavigate the Denver TCA in a manner that would not require much deviation from current flying practices. Operators would be permitted to operate beneath the floors in the expanded segments of the TCA lateral

boundaries primarily to the east of DVX. Because the existing floors (primarily to the west of DVX) take into account high terrain, sufficient airspace for sports parachutists to conduct jumps would still be available without TCA involvement. The proposed rule would not have an adverse impact on GA student pilots because they rarely fly in airspace above 10,000 feet MSL. In nearly all instances, a floor of 10,000 feet MSL is considered to be sufficient space to allow GA student pilots to conduct their flying below the proposed expanded segments of the TCA lateral boundaries.

Balloonists, parachutists, ultralight and sailplane pilots, or fixed-base operators would not be affected significantly by the proposal. Letters of agreement and cutouts are expected to be executed, where advisable, to ensure minimum affect on these operators.

In view of the aforementioned discussion, the total cost of the proposed rule is estimated to be zero.

Benefits

The proposed rule is expected to generate benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced aviation fatalities and property damages as the result of a lowered risk of midair collisions.

This proposed action also would generate benefits in the form of eliminating from the current TCA design 4 nautical miles of airspace west of the Jefferson County Airport. The reduction in TCA airspace is intended to provide two types of benefits. First, the proposal would reduce the distance aircraft operators flying under VFR would have to circumnavigate the TCA without concerns related to high terrain. The existing floor in this section of airspace is 7,000 feet MSL, which is not easy to transit in high terrain areas. Second, the proposal would align areas near and in the TCA with better visual landmarks so that aircraft operators flying under VFR can stay clear of the TCA.

The proposed Denver TCA would create more controlled airspace by increasing the ceiling from 11,000 to 12,000 feet MSL and extending the northern, southern, and eastern lateral boundaries from 20 to 30 nautical miles. Because the nature of the proposed rule is proactive, that is the FAA is taking action to prevent a safety problem based on an early symptom, the potential safety benefits are extremely difficult to quantify in monetary terms. In this case, the symptom is increased complexity (or density) of aircraft operations in the vicinity of the present ceiling and lateral boundaries of the Denver TCA. As the result of this increased complexity, the regulatory airspace is to be expanded in the aforementioned areas of the TCA.

Up to now, safety has been maintained in the vicinity of the existing Denver TCA in the face of steady activity growth by such measures as procedural and aircraft metering changes. These measures have been successful in the past as evidenced by a record of no midair collisions in the TCA. However, these measures would not be adequate in the future. Without documented evidence of midair collisions in the Denver TCA, estimating the probability of a potential occurrence in the absence of this proposed rule cannot be determined with a reliable degree of certainty. In the absence of this proposed rule, the FAA recognizes there is an incipient safety problem in the subject TCA that could become critical and could lead to potentially catastrophic consequences, such as a midair collision between a large air carrier airplane and a GA airplane. This proposed action is intended to reduce significantly the risk of those consequences.

It it important to note that many of these potential safety benefits would not occur as predicted because the Mode C and TCAS rules are in effect. Consequently, the safety benefits of the proposal and the Mode C and TCAS rules are inseparable and cannot be estimated independently from each other.

Conclusion

In view of the estimated zero cost of compliance and enhanced aviation safety, the FAA has determined that the proposed rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules which may have "a significant economic impact on a substantial number of small entities." The small entities which could be affected potentially by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft. Only those unscheduled aircraft operators without the capability to operate under IFR would be potentially impacted by the proposed rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators already are equipped to operate under IFR. Such operators regularly fly in airports where radar approach control services have been established. Therefore, the FAA believes this proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. The proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Federalism Implication

Tne regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contracting the person identified under "**FOR FURTHER INFORMATION CONTACT**."

List of Subjects

14 CFR Part 71

Aviation safety, General operating and flight rules, Incorporation by reference, Terminal control areas.

14 CFR Part 91

Aircraft, Air traffic control, Automatic altitude reporting equipment, Mode C veil, Transponder.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 14 CFR part 71 and part 91 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.401(b)—Terminal Control Areas

* * * * *

ANM CO TCA Denver, CO [Revised]

Primary Airport

Denver International Airport (lat. 39°51′38″N., long. 104°40′22″W.)

Watkins VOR (lat. 39°48′44″N., long. 104°39′34″W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 12,000 feet MSL beginning at the intersection of Bromley Lane and the 10-mile arc of the Watkins VOR, thence clockwise along the 10-mile arc until the Watkins 090° radial, extending west on the Watkins 090° radial until Imboden Mile Road, thence south along Imboden Mile Road until I–70, extending west along I–70 until intercepting the 10-mile arc of the Watkins VOR, extending clockwise along the 10-mile arc until Bromley Lane, and thence east along Bromley Lane to the point of beginning; excluding that airspace within a 1-mile radius of Heckendorf Airport.

Area B. That airspace extending upward from 7,500 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Watkins VOR, bounded on the north by I–70 and bounded on the east by a line parallel to and 2 miles east of the Buckley Air National Guard Base Runway 14/32 centerline.

Area C. That airspace extending upward from 6,200 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Watkins VOR bounded on the north by I–70, bounded on the east by Imboden Mile Road, and bounded on the west by a line parallel to and 2 miles east of Buckley Air National Guard Base Runway 14/32 centerline.

Area D. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Watkins VOR bounded on the north by the Watkins 090° radial, and bounded on the west by Imboden Mile Road.

Area E. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL beginning at the Watkins VOR 025° radial 15-mile DME fix, extending northeast along the Watkins 025° radial until intercepting the Watkins VOR 20-mile arc, extending clockwise along the 20-mile arc until I–25, thence north along I–25 until Hampden Avenue, extending west along Hampden Avenue until Wadsworth Boulevard, thence north along Wadsworth Boulevard and the Colorado Highway 287 until Colorado Highway 7, extending east along Colorado Highway 7 to I–25, thence north along I–25 until intercepting the Watkins VOR 20-mile arc, extending clockwise along the 20-mile arc until intercepting the Watkins VOR 329° radial, thence southeast along the Watkins VOR 329° radial until intercepting the 15-mile arc, extending counterclockwise along the 15-mile arc until I–70 thence east along I–70 until intercepting the 10-mile arc, extending counterclockwise along the 10-mile arc until the Watkins VOR 090° radial, extending east on the Watkins 090° radial until intercepting the Watkins 15-mile arc, and thence counterclockwise to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 10- and 15-mile radius of the Watkins VOR, bounded on the north by the Watkins VOR 025° radial and bounded on the south by the Watkins VOR 090° radial.

Area G. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL beginning at the Watkins VOR 329° radial 10-mile fix; extending northeast on the Watkins 329° radial until the 15-mile arc, thence clockwise along the 15-mile arc until the Watkins 025° radial, extending south on the 025° radial until the 10-mile arc, and extending counterclockwise on the 10-mile arc until Bromley Lane, and thence west along Bromley Lane until the Watkins VOR 10-mile arc thence to the point of beginning; including that airspace within a 1-mile radius of Heckendorf Airport.

Area H. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 10- and 15-mile radius of the Watkins VOR, bounded on the north by the Watkins 329° radial and bounded on the south by I–70.

Area J. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 15- and 20-mile radius of the Watkins VOR, bounded on the west by the Watkins VOR 329° radial and bounded on the east by the Watkins VOR 025° radial.

Area K. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL beginning at the intersection of Hampden Avenue and I–25, extending south along I–25 until intercepting the Watkins VOR 30-mile arc, extending clockwise along the 30-mile arc until a point 3 miles south of Waterton, CO (lat. 39°26′25″N., long. 105°05′40″W.) extending north to Waterton and Canyon Road (lat. 39°29′40″N., long. 105°05′40″W.), extending north along Canyon Road (Colorado Highway 75) until Wadsworth Boulevard, extending north along Wadsworth Boulevard until Hampden Avenue and extending east along Hampden Avenue to the point of beginning.

Area L. That airspace extending upward from 9,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Watkins VOR bounded on the west by I–25 and bounded on the east by the Watkins VOR 156° radial.

Area M. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Watkins VOR, bounded on the north by the Watkins VOR 025° radial and bounded on the south by the Watkins VOR 156° radial.

Area N. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Watkins VOR, bounded on the west by the Watkins VOR 329° radial and bounded on the east by the Watkins VOR 025° radial.

Area P. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL beginning at the Watkins VOR 329° radial 20-mile DME fix, extending counterclockwise along the Watkins VOR 20-mile arc until I–25, extending south along I–25 until Colorado Highway 7, thence west along Colorado Highway 7 until Colorado Highway 287, thence north along Colorado Highway 287 until intercepting the Watkins VOR 30-mile arc, extending clockwise along the 30-mile arc until the Watkins VOR 329° radial, and extending southeast along the Watkins VOR 329° radial to the point of beginning.

* * * * *

PART 91—[AMENDED]

3. The authority citation for 14 CFR part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E. O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Special Federal Aviation Regulation No. 62, section 2, paragraph (7) would be revised to read as follows:

Special Federal Aviation Regulation No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement

* * * * *

Section 2. * * *

(7) Airports within a 30-nautical-mile radius of the Denver International Airport.

Airport name	Airport ID	Altitude (AGL)
Air Dusters Inc., Airport, Roggen, CO.	49CO	1,200
Bijou Basin Airport, Byers, CO....	CD17	1,200
Boulder Municipal Airport, Boulder, CO.	1V5	1,200
Bowen Farms No. 1 Airport, Littleton, CO.	CO98	1,200
Bowen Farms No. 2 Airport, Strasburg, CO.	3CO5	1,200

Airport name	Airport ID	Altitude (AGL)
Carrera Airpark Airport, Mead, CO.	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Chaparral Airport, Byers, CO	CO18	1,200
Colorado Antique Field Airport, Niwot, CO.	8CO7	1,200
Comanche Livestock Airport, Strasburg, CO.	59CO	1,200
Dead Stick Ranch Airport, Kiowa, CO.	18CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO.	CO58	1,200
Frontier Airstrip Airport, Mead, CO.	84CO	1,200
Horseshoe Landings Airport, Keenesburg, CO.	CO60	1,200
Hoy Airstrip Airport, Bennett, CO.	76CO	1,200
J & S Airport, Bennett, CO	CD14	1,200
Kostroski Airport, Franktown, CO.	43CO	1,200
Kugel-Strong Airport, Platteville, CO.	27V	1,200
Lard Airport, Keenesburg, CO	CO82	1,200
Lemons Private Strip Airport, Boulder, CO.	CO10	1,200
Lindys Airpark, Hudson, CO	7CO3	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO.	02V	1,200
Platte Valley Airport, Hudson, CO.	18V	1,200
Rancho De Aereo Airport, Mead, CO.	05CO	1,200
Reid Ranches Airport, Roggen, CO.	7CO6	1,200
Singleton Ranch Airport, Byers, CO.	68CO	1,200
Sky Haven Airport, Byers, CO	CO17	1,200
Spickard Farm Airport, Byers, CO.	5CO4	1,200
Tri-County Airport, Erie, CO	48V	1,200
Westberg-Rosling Farms Airport, Roggen, CO.	74CO	1,200
Yoder Airstrip Airport, Bennett, CO.	CD09	1,200

* * * * *

Issued in Washington, DC, on August 19, 1992.

Harold W. Becker,

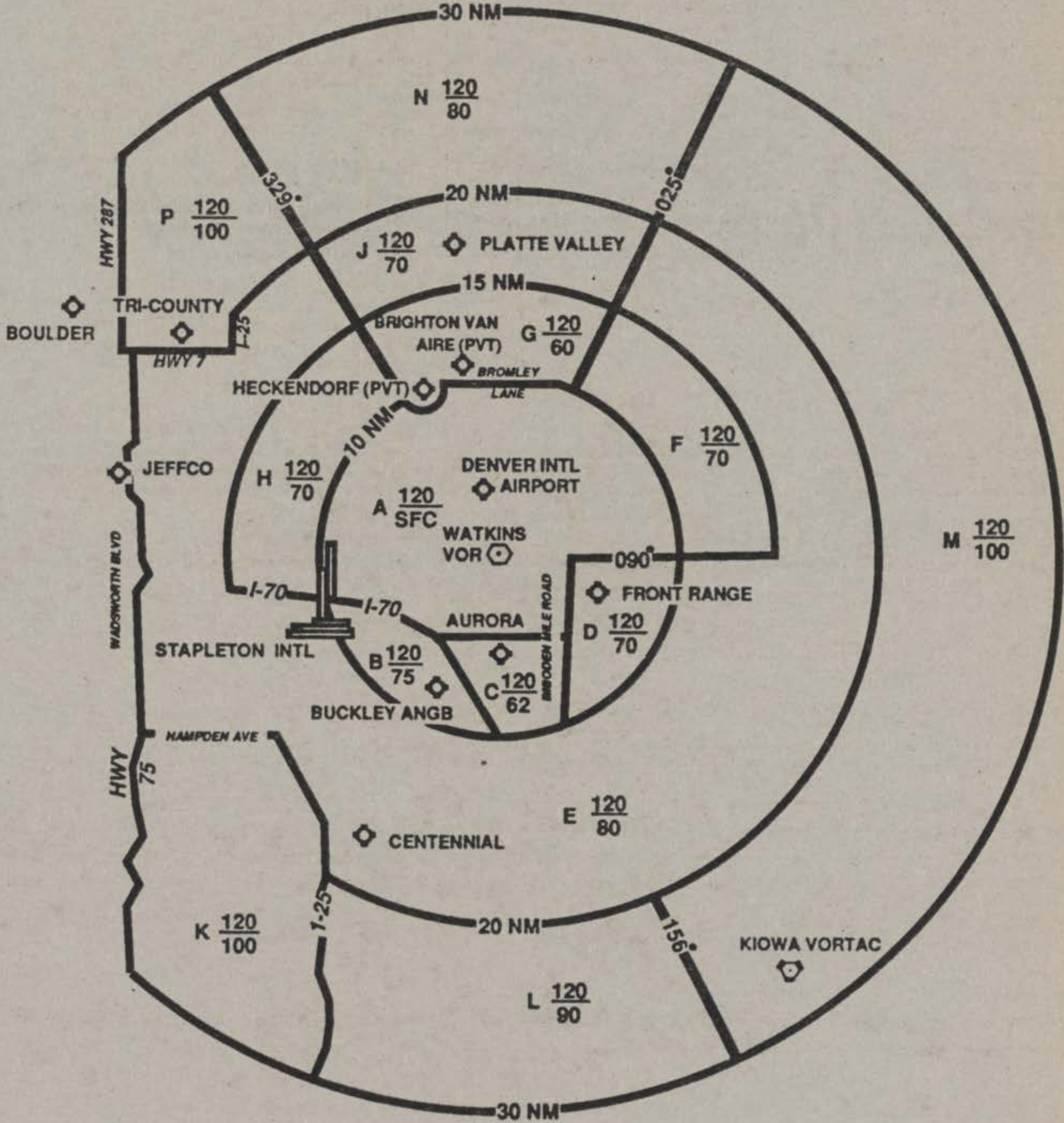
Manager, Airspace-Rules and Aeronautical Information Division.

Appendix—Denver International Airport, Terminal Control Area

Note: This appendix will not appear in the Code of Federal Regulations:

BILLING CODE 4910-13-M

DENVER INTERNATIONAL AIRPORT
TERMINAL CONTROL AREA
(NOT TO BE USED FOR NAVIGATION)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

federal register

Wednesday
August 26, 1992

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under the *NIH Guidelines for Research Involving Recombinant DNA Molecules.*

SUMMARY: This notice sets forth six actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today six actions are being promulgated under the *NIH Guidelines for Research Involving Recombinant DNA Molecules.* These six proposed actions were published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512) and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 1–2, 1992.

I. Background Information and Decisions on Actions Under the NIH Guidelines

A. Addition of Appendix D–XXVIII to the NIH Guidelines

In a letter dated January 21, 1992, Dr. Malcolm Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, indicated his intention to submit a human gene therapy protocol to the RAC for formal review and approval. The title of this protocol is: "Phase I Study of Cytokine-Gene Modified Autologus Neuroblastoma Cells for Treatment of Relapsed/Refractory Neuroblastoma." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992, with the following modifications: (1) The informed consent document will include a statement regarding protection of the patient from publicity, (2) the informed consent document will include a request for autopsy in the event of death, and (3) the Interleukin-2 (IL–2) viral vector will be assayed in human neuroblastoma cell lines to verify that no oncogenic virus is rescued.

The RAC, by a vote of 19 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to Appendix D:

Appendix D–XXVIII

"Dr. Malcolm Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, can conduct gene therapy experiments on twelve patients with relapsed/refractory neuroblastoma who have relapsed after receiving autologus bone marrow transplant. In an attempt to stimulate the patient's immune response, the gene coding for Interleukin-2 (IL–2) will be used to transduce tumor cells, and these gene-modified cells will be injected subcutaneously in a Phase I dose escalation trial. Patients will be evaluated for evidence of possible toxicity and immunologic efficacy."

I accept this recommendation and Appendix D–XXVIII of the *NIH Guidelines* will be added accordingly.

B. Addition of Appendix D–XXIX to the NIH Guidelines

In a letter dated February 14, 1992, Dr. Edward H. Oldfield indicated his intention to submit a human gene therapy protocol in collaboration with Drs. Kenneth Culver, Zvi Ram, and R. Michael Blaese of the National Institutes of Health, Bethesda, Maryland, to the RAC for formal review and approval. The title of this protocol is: "Gene Therapy for the Treatment of Brain Tumors Using Intra-Tumoral Transduction with the Thymidine Kinase Gene and Intravenous Ganciclovir." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992, with the following modifications: (1) Animal model toxicity data will be submitted in a tabulated format, and (2) a section will be included in the protocol that describes a well devised plan detailing the criteria for stopping the protocol in the event that untoward effects are observed, and (3) revisions in the Informed Consent document regarding the retroviral vector. The RAC, by a vote of 19 in favor, 0 opposed, and 1 abstention, approved the protocol. The following section may be added to appendix D:

Appendix D–XXIX

"Drs. Edward Oldfield, Kenneth Culver, Zvi Ram, and R. Michael Blaese of the National Institutes of Health, Bethesda, Maryland, can conduct gene therapy experiments on ten patients with malignant primary brain tumors and ten patients with lung cancer, breast cancer, malignant melanoma, or renal cell carcinoma who have brain metastases. The patient population will be limited to adults over the age of 18.

"Patients will be divided into two groups based on the surgical accessibility of their lesions. Both surgically accessible and surgically inaccessible lesions will receive intra-tumoral injections of the retroviral Herpes simplex thymidine kinase (HS-tk) vector-producer cell line, G1TkSvNA, using a guided stereotaxic approach. Surgically accessible lesions will be excised seven days after stereotaxic injection, and the tumor bed will be infiltrated with the HS-tk producer cells. The removed tumor will be evaluated for the efficiency of transduction. Ganciclovir (GCV) will be administered beginning on the fifth postoperative day. In the case of surgically inaccessible lesions, the patients will receive intravenous therapy with GCV seven days after receiving the intra-tumoral injections of the retroviral HS-tk vector-producer cells."

I accept this recommendation and Appendix D–XXIX of the NIH Guidelines will be added accordingly.

C. Addition of Appendix D–XXX to the NIH Guidelines.

In a letter dated February 28, 1992, Dr. Albert D. Deisseroth of MD Anderson Cancer Center, Houston, Texas, indicated his intention to submit a human gene transfer protocol to the RAC for formal review and approval. The title of this protocol is: "Use of Two Retroviral Markers to Test Relative Contribution of Marrow and Peripheral Blood Autologous Cells to Recovery After Preparative Therapy (in Patients with Chronic Myelogenous Leukemia)." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992. The RAC, by a vote of 20 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to Appendix D:

Appendix D–XXX

"Dr. Albert D. Deisseroth of MD Anderson Cancer Center, Houston, Texas, can conduct gene transfer experiments on ten patients who have developed blast crisis or accelerated phase chronic myelogenous leukemia

(CML). The retroviral vectors G1Na and LNL6 which code for neomycin resistance will be used to transduce autologous peripheral blood and bone marrow cells respectively; these are cells that have been removed and stored at the time of cytogenetic remission or re-induction of chronic phase in Philadelphia chromosome positive CML patients. Following reinduction of the chronic phase of CML and preparative chemotherapy, patients will be infused with the transduced autologous cells.

"This protocol is designed to determine the source of relapse of CML. If polyclonal CML neomycin marked blastic cells appear at the time of relapse, their presence will indicate that relapse arises from the leukemic CML blast cells present in the autologous cells infused following chemotherapy. If residual systemic disease contributes to relapse, the neomycin resistance gene will not be detected in the CML leukemic blasts at the time of relapse.

"By using two separate vectors detectable by the polymerase chain reaction assay (PCR), this study will compare the relative contributions of the peripheral blood and marrow to generate hematopoietic recovery after bone marrow transplantation and evaluate purging and selection of peripheral blood or bone marrow as a source of stem cells for transplant. The percentage of neomycin resistant CML cells which are leukemic will be determined by PCR analysis and detection of bcr-abl messenger RNA."

I accept this recommendation and Appendix D-XXX of the NIH Guidelines will be added accordingly.

D. Addition of Appendix D-XXXI to the NIH Guidelines

In a letter dated April 14, 1992, Dr. Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, indicated her intention to submit three human gene transfer protocols to the RAC for formal review and approval. The titles of these protocols are: "Genetic Marking with Retroviral Vectors to Study the Biology of Hematopoietic Reconstitution after Autologous Transplantation for Multiple Myeloma," "Genetic Marking with Retroviral Vectors to Study the Biology of Hematopoietic Reconstitution after Autologous Transplantation for Breast Cancer," and "Genetic Marking with Retroviral Vectors to Study the Biology of Hematopoietic Reconstitution after Autologous Transplantation for Chronic Myelogenous Leukemia." This request was published for comment in the **Federal Register** of May 6, 992 (57 FR 19512).

These protocols were reviewed and recommended for approval during the RAC meeting on June 1-2, 1992. The RAC, by identical votes of 19 in favor, 0 opposed, and no abstentions, approved the protocols. The following section may be added to Appendix D:

Appendix D-XXXI

"Dr. Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, can conduct gene transfer experiments on up to 48 patients with multiple myeloma, breast cancer, or chronic myelogenous leukemia. The retroviral vectors G1N and LNL6 will be used to transfer the neomycin resistance marker gene into autologous bone marrow and peripheral blood stem cells in the presence of growth factors to examine hematopoietic reconstitution after bone marrow transplantation. The efficiency of transduction of both short and long term autologous bone marrow reconstituting cells will be examined.

"Autologous bone marrow and CD34+ peripheral blood stem cells will be enriched prior to transduction. Myeloma and CML patients will receive both autologous bone marrow and peripheral blood stem cell transplantation. These separate populations will be marked with both the G1N and LNL6 retroviral vectors. If short and long term marking experiments are successful, important information may be obtained regarding the biology of autologous reconstitution, the feasibility of retroviral gene transfer into hematopoietic cells, and the contribution of viable tumor cells within the autograft to disease relapse."

I accept this recommendation and Appendix D-XXXI of the NIH Guidelines will be added accordingly.

E. Addition of Appendix D-XXXII to the NIH Guidelines

In a letter dated January 16, 1992, Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, indicated his intention to submit a human gene therapy protocol to the RAC for formal review and approval. The title of the protocol is: "Immunization with HLA-A2 Matched Allogeneic Melanoma Cells that Secrete Interleukin-2 (IL-2) in Patients with Metastatic Melanoma." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1-2, 1992, with the following modifications: (1) the patient eligibility criteria will be defined as those who have a life expectancy of greater than four months and who have failed one course of conventional therapy, and (2) a revised statement will be included in the Informed Consent document regarding the description of research procedures. The RAC, by a vote of 20 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to Appendix D:

Appendix D-XXXII

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can conduct gene therapy experiments on twelve patients over 18 years of age with metastatic melanorma who are HLA-A2 positive and who have failed conventional therapy. This Phase I study will examine whether allogeneic HLA-A2 matched melanoma cells expressing recombinant human Interleukin-2 (IL-2) can be injected subcutaneously and used to create a potent tumor-specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL-2, a clonal expansion of tumor-specific effector cells is expected. The effector populations may access residual tumor at distant sites via the systemic circulation."

I accept this recommendation and Appendix D-XXXII of the *NIH Guidelines* will be added accordingly.

F. Addition of Appendix D-XXXIII to the NIH Guidelines

In a letter dated January 16, 1992, Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, indicated his intention to submit a human gene therapy protocol to the RAC for formal review and approval. The title of this protocol is: "Immunization with IL-2 Secreting Allogeneic HLA-A2 Matched Renal Cell Carcinoma Cells in Patients with Advanced Renal Cell Carcinoma." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1-2, 1992, with a modification to the patient's Informed Consent regarding the description of research procedures. The RAC, by a vote of 20 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to appendix D:

Appendix D-XXXIII

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can

conduct gene therapy experiments on twelve patients over 18 years of age with renal cell carcinoma who are HLA-A2 positive and who have failed conventional therapy. This Phase I study will examine whether allogeneic HLA-A2 matched renal cell carcinoma cells expressing recombinant human Interleukin-2 (IL-2) can be injected subcutaneously and used to create a potent tumor specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL-2, a clonal expansion of tumor specific effector cells is expected. These effector populations may access residual tumor at distant sites via the systemic circulation."

I accept this recommendation and Appendix D-XXXIII of the *NIH Guidelines* will be added accordingly.

II. Summary of Actions

A. Addition of Appendix D-XXVIII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Malcolm Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, can conduct gene therapy experiments on twelve patients with relapsed/refractory neuroblastoma who have relapsed after receiving autologous bone marrow transplant. In an attempt to stimulate the patient's immune response, the gene coding for Interleukin-2 (IL-2) will be used to transduce tumor cells, and these gene-modified cells will be injected subcutaneously in a Phase 1 dose escalation trial. Patients will be evaluated for an anti-tumor response."

B. Addition of Appendix D-XXIX to the NIH Guidelines

The following section is added to Appendix D:

"Drs. Edward Oldfield, Kenneth Culver, Zvi Ram, and R. Michael Blaese of the National Institutes of Health, Bethesda, Maryland, can conduct gene therapy experiments on ten patients with primary malignant brain tumors and ten patients with lung cancer, breast cancer, malignant melanoma, or renal cell carcinoma who have brain metastases. The patient population will be limited to adults over the age of 18.

"Patients will be divided into two groups based on the surgical accessibility of their lesions. Both surgically accessible and surgically inaccessible lesions will receive intra-tumoral injections of the retroviral Herpes simplex thymidine kinase (HS-tk) vector-producer cell line, G1TkSvNa, using a guided stereotaxic approach. Surgically accessible lesions will be excised seven days after sterotaxic injection, and the tumor bed will be infiltrated with the HS-tk producer cells. The removed tumor will be evaluated for the efficiency of transduction. Ganciclovir (GCV) will be administered beginning on the fifth postoperative day. In the case of surgically inaccessible lesions, the patients will receive intravenous therapy with GCV seven days after receiving the intra-tumoral injections of the retroviral HS-tk vector-producer cells."

C. Addition of Appendix D-XXX to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Albert D. Deisseroth of MD Anderson Cancer Center, Houston, Texas, can conduct gene transfer experiments on ten patients who have developed blast crisis or accelerated phase chronic myelogenous leukemia (CML). The retroviral vectors G1N and LNL6 which code for neomycin resistance will be used to transduce autologous peripheral blood and bone marrow cells that have been removed and stored at the time of cytogenetic remission or re-duction of chronic phase in Philadelphia chromosome positive CML patients. Following reinduction of the chronic phase of CML and preparative chemotherapy, patients will be infused with the transduced autologous cells.

"This protocol is designed to determine the cause of relapse of CML. If polyclonal CML neomycin marked blastic cells appear at the time of relapse, their presence will indicate that relapse arises from the leukemic CML blast cells present in the autologous cells infused following chemotherapy. If residual systemic disease contributes to relapse, the neomycin resistance gene will not be detected in the CML leukemic blasts at the time of relapse.

"This study will compare the relative contributions of the peripheral blood and bone marrow to generate hematopoietic recovery after bone marrow transplantation and evaluate purging and selection of peripheral blood or bone marrow as a source of stem cells for transplant. The percentage of neomycin resistant CML cells which are leukemic will be determined by PCR analysis and detection of bcr-abl mRNA."

D. Addition of Appendix D-XXXI to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, can conduct gene transfer experiments on up to 48 patients with multiple myeloma, breast cancer, or chronic myelogenous leukemia. The retroviral vectors G1N and LNL6 will be used to transfer the neomycin resistance marker gene into autologous bone marrow and peripheral blood stem cells in the presence of growth factors to examine hematopoietic reconstitution after bone marrow transplantation. The efficiency of transduction of both short and long term autologous bone marrow reconstituting cells will be examined.

"Autologous bone marrow and CD34+ peripheral blood stem cells will be enriched prior to transduction. Myeloma and CML patients will receive both autologous bone marrow and peripheral blood stem cell transplantation. These separate populations will be marked with both the G1N and LNL6 retroviral vectors. If short and long term marking experiments are successful, important information may be obtained regarding the biology of autologous reconstitution, the feasibility of retroviral gene transfer into hematopoietic cells, and the contribution of viable tumor cells within the autograft to disease relapse."

E. Addition of Appendix D-XXXII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can conduct gene therapy experiments on twelve patients over 18 years of age with metastatic melanoma who are HLA-A2 positive and who have failed conventional therapy. This is a phase I study to examine whether allogeneic HLA-A2 matched melanoma cells expressing recombinant human Interleukin-2 (IL-2) can be injected subcutaneously and used to create a potent tumor specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL-2, a clonal expansion of tumor specific effector cells is expected. These effector populations may access residual tumor at distant sites via the systemic circulation."

F. Addition of Appendix D-XXXIII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can conduct gene therapy experiments on twelve patients over 18 years of age

with renal cell carcinoma who are HLA-A2 positive and who have failed conventional therapy. This Phase I study will examine whether allogeneic HLA-A2 matched renal cell carcinoma cells expressing recombinant human Interleukin-2 (IL-2) can be injected subcutaneously and used to create a potent tumor specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL-2, a clonal expansion of tumor specific effector cells is expected. These effector populations may access residual tumor at distant sites via the systemic circulation."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective date: August 14, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92-20369 Filed 8-25-92; 8:45 am]

BILLING CODE 4140-01-M

federal register

Wednesday
August 26, 1992

Part V

Department of Education

34 CFR Parts 76 and 80

State-Administered Programs Under the Rehabilitation Act of 1973; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 76 and 80

RIN 1880-AA41

State-Administered Programs under the Rehabilitation Act of 1973

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the administrative responsibilities of grantees and subgrantees under State-administered programs authorized under the Rehabilitation Act of 1973 (Rehabilitation Act). On October 1, 1988, new regulations became effective, establishing government-wide regulations implementing OMB Circular A-102 (Administration of Grants and Cooperative Agreements to State and Local Governments). Those regulations contain a rule requiring liquidation of obligations within 90 days after the end of the funding period, unless the State requests a waiver from the liquidation rule or program regulations provide for a different deadline. This proposed amendment to the Education Department General Administrative Regulations (EDGAR) would extend the liquidation period for State-administered programs under the Rehabilitation Act so that, in most cases, States and subgrantees would not have to request waivers under these programs.

DATES: All comments on the proposed regulations must be received on or before October 13, 1992.

ADDRESSES: Comments should be addressed to: Sherlyn Williams, Chief, Policy and Support Staff, Grants Division, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3636, ROB-3), Washington, DC 20202-4700.

FOR FURTHER INFORMATION CONTACT: Sherlyn Williams, Chief, Policy and Support Staff, Grants Division, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3636, ROB-3), Washington, DC 20202-4700, (202) 708-5580. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 1, 1988, the regulations in new 34 CFR part 80 became effective. The Secretary promulgated part 80 as part of a government-wide initiative to establish common regulations implementing OMB Circular A-102. Section 80.23, *Availability of funds*, provides that a grantee must liquidate obligations no later than 90 days after the end of the funding period or other period specified in program regulations, unless the grantee requests and receives a waiver. The Secretary has determined that this period for liquidation of obligations places an inappropriate and burdensome restriction on grantees and subgrantees under State-administered programs authorized under the Rehabilitation Act of 1973 (Rehabilitation Act).

At the Education Summit held in Charlottesville, Virginia in September, 1989, the President and the governors agreed "to examine Federal regulations under current law and to move in the direction of greater flexibility." The Secretary is committed to providing regulatory flexibility, wherever possible, to allow States and localities to make decisions on how best to operate Federally-funded education programs to meet program objectives. The regulatory flexibility that would be provided by these proposed regulations is in furtherance of this objective.

Most programs of the Department are funded on a forward funded basis. That is, Congress appropriates funds for these programs in the fiscal year before the fiscal year the funds are available for obligation by the Department, States, and subgrantees. Also, under forward funded programs, Congress makes the funds available for obligation on July 1, rather than on October 1, as is the case for programs funded on a current year basis. These programs are also subject to the Tydings Amendment of the General Education Provisions Act (GEPA section 412(b), 20 U.S.C. 1225(b)), which makes funds available for obligation for an additional year after the fiscal year for which the funds were appropriated. Thus, programs that are subject to the Tydings Amendment and are forward funded have funds available for obligation for a period of 27 months.

In contrast to the forward funded programs, State-administered programs authorized under the Rehabilitation Act make funds available on a current fiscal year basis; Congress appropriates the funds for Rehabilitation Act State-administered programs in the same fiscal year that they are made available for obligation by the Department, States, and subgrantees. Also, Rehabilitation Act programs are not subject to the carry-over provisions of the Tydings Amendment. Thus, funds are made available under Rehabilitation Act State-administered programs for a maximum period of only 12 months, commencing on October 1.

The nature of these ongoing Rehabilitation Act programs frequently requires contracts with performance periods that fall, at least in part, in the succeeding fiscal year. Provided the original obligation by a State or subgrantee is allowable under the cost principles in OMB Circular A-87, there may be good reasons for extending the liquidation period for these programs beyond 90 days after the period for obligation ends. States and their subgrantees must, under part 80, either liquidate obligations before the contract periods for performance expire or obtain waivers for extension of the period for liquidation. In the first case, the State or subgrantee may lose valuable leverage to ensure proper performance under the contract. In the second case, the State and its subgrantees would be forced to use limited resources requesting waivers from the rule, which, if the requests fall within the scope of this proposed rule, the Department would uniformly grant.

In order to eliminate the undesirable effects of the liquidation rule in 34 CFR 80.23(b) on the various State-administered programs authorized under the Rehabilitation Act, the Secretary proposes to add a new § 76.708 to EDGAR. In general, the new section would extend the period for liquidation of certain types of obligations.

Under § 76.707, some obligations occur at the time services are delivered or utilities are provided. Other obligations occur at the time the State or subgrantee makes a binding written agreement to obtain services or property. If the obligation is based on the date of a written commitment, obligations made near the end of the fiscal year may involve performance or delivery, and the liquidation of obligations, more than 90 days after the end of the fiscal year. (See § 76.707(a), (c), and (d).) The proposed rule would extend the liquidation period if performance or delivery could occur after the end of the fiscal year in which the funds must be obligated, i.e., the end of the funding period under § 80.23(b).

Specifically, under § 76.707(a), an obligation for acquisition of real or personal property takes place on the date on which the grantee or subgrantee enters into a binding written commitment to acquire the property. In many cases equipment purchased under this obligation rule takes longer than 90 days for delivery. The rule in proposed § 76.708 would permit liquidation up to 90 days after the date for delivery of the equipment or 455 days after obligation, (365 days for performance plus 90 days for liquidation), whichever is earlier. The same problem exists for closing on

real property transactions, and the new rule would permit liquidation up to 90 days after closing or 455 days after obligation, whichever is earlier.

Under § 76.707(c), an obligation for personal services of a contractor who is not an employee of the State or subgrantee takes place on the date that the State or subgrantee makes a binding written commitment to obtain the services. Under proposed § 76.708, the liquidation period for these kinds of obligations would end 90 days after the end of the performance period under the contract or 455 days after the date that the obligation was made, whichever is earlier. Under the proposed rule, this same outcome would apply under § 76.707(d).

As a general matter, State-administered programs other than those authorized under the Rehabilitation Act were not affected by the Part 80 liquidation rule until September 30, 1991, because these other programs are forward funded and subject to the Tydings Amendment. At this time the Secretary does not see a need to establish an extended liquidation period for these programs because States and their subgrantees have a significantly longer period under these programs to arrange their obligations.

The State-administered program authorized under the Library Services Construction Act (LSCA) is in a slightly different position than the other State-administered programs. While this program has authority to receive funds on a forward funded basis, as a matter of practice, Congress has funded the LSCA on a current year basis. However, funds appropriated for use under the LSCA are subject to the Tydings Amendment. Thus, like other non-Rehabilitation Act State-administered programs, funds are available for an additional year after the year for which they are appropriated. Depending upon when in the year Congress appropriates the funds, States have from between 12 and 24 months to obligate LSCA funds.

There are no data at this time indicating that the rule proposed in this document should be applied to other State-administered programs, and the Secretary seeks comments about whether there is any need to apply the extended liquidation rule to those programs. If a commenter supports extension of the rule in this NPRM to other State-administered programs, the Secretary is interested in comment about the hardships, if any, that the current liquidation rule creates for a State in meeting educational objectives for students.

Finally, while the Secretary proposes to make a limited extension of the liquidation rule, the Secretary does not have authority to extend the statutory period for obligation under the programs that would be affected by this proposed rule.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Although the regulations would affect some small entities that are subgrantees under one of the State-administered programs authorized under the Rehabilitation Act, the regulations would not have a significant impact on these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would allow greater flexibility while retaining minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

The proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations, including comments about whether the Secretary should apply the extended liquidation period to State-administered programs other than those authorized under the Rehabilitation Act of 1973.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3636, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 76

Education Department, Grant programs—education, Grants administration, Intergovernmental relations, State-administered programs.

34 CFR Part 80

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

Dated: June 10, 1992.

(Catalog of Federal Domestic Assistance Number does not apply.)

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend parts 76 and 80 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for Part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

2. A new § 76.708 is added to read as follows:

§ 76.708 Liquidation of obligations under certain programs.

(a)(1) Notwithstanding 34 CFR 80.23(b), grantees and subgrantees under the programs listed in paragraph (a)(2) of this section shall liquidate obligations as specified in this section.

(2) The programs subject to this section are—

(i) The State Vocational Rehabilitation Services Program implemented at 34 CFR part 361;

(ii) The State Supported Employment Services Program implemented at 34 CFR part 363;

(iii) The State Independent Living Rehabilitation Services Program implemented at 34 CFR part 365; and

(iv) The Client Assistance program implemented at 34 CFR part 370.

(b)(1) The following obligations must be liquidated within 90 days after the end of the period for obligation of funds:

(i) Personal services by an employee of the State or subgrantee.

(ii) Public utility services.

(iii) Travel.

(iv) Rental of real or personal property.

(2) The following obligations must be liquidated within 90 days after the end of the period for performance under the binding written commitment, or within 455 days after the date the funds were obligated, whichever is earlier:

(i) Acquisition of real or personal property.

(ii) Personal services by a contractor who is not an employee of the State or subgrantee.

(iii) Performance of work other than personal services.

(c)(1) The Secretary may extend for good cause the period for liquidation of obligations by a grantee or subgrantee at the request of the grantee.

(2) A grantee may extend for good cause the period for liquidation of obligations of a subgrantee if—

(i) The subgrantee requests the extension, in writing; and

(ii) The Secretary has authorized the extension under paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

3. The authority citation for part 80 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 3474, and OMB Circular A-102, unless otherwise noted.

4. A cross reference is added after § 80.23 to read as follows:

§ 80.23 Period of availability of funds.

* * * * *

Cross Reference: 34 CFR 76.708 contains the liquidation requirements for programs authorized under the Rehabilitation Act of 1973.

[FR Doc. 92-20370 Filed 8-25-92; 8:45 am]
BILLING CODE 4000-01-M

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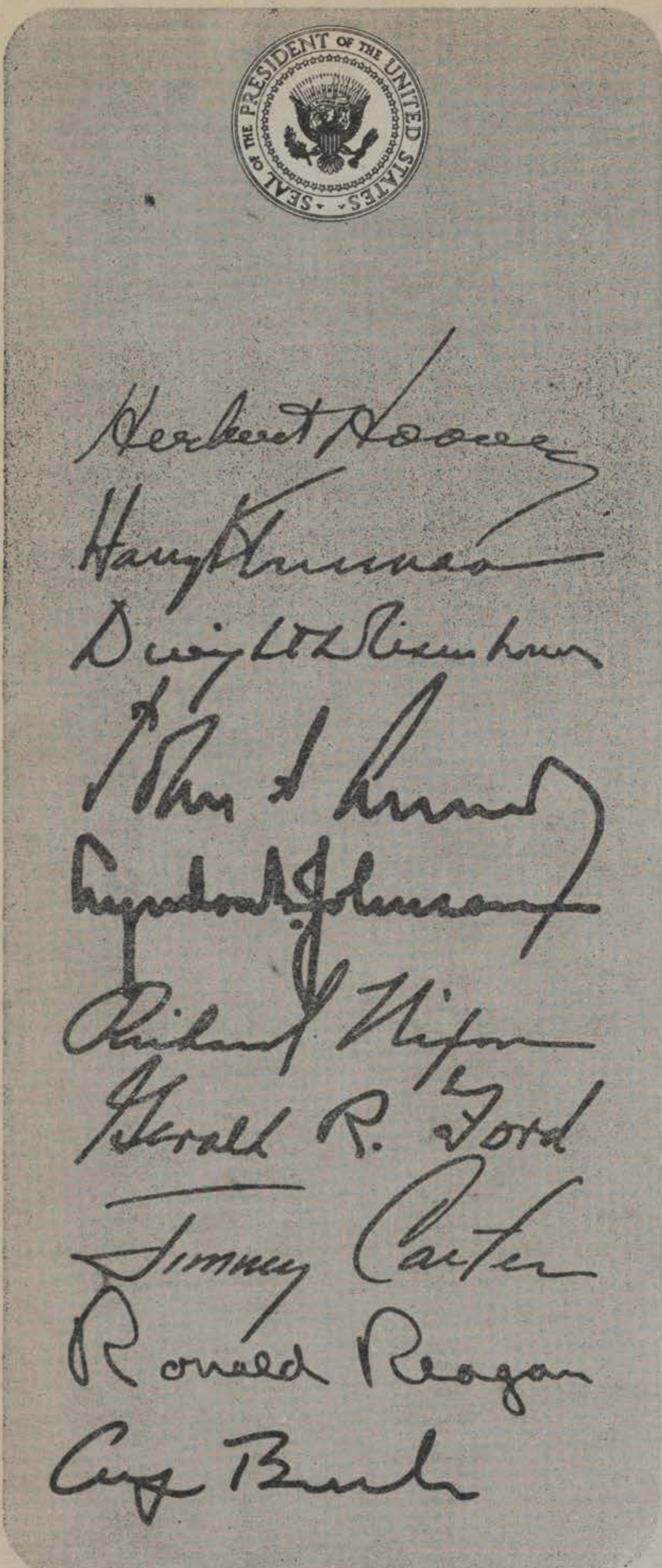

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